

Canada

RESTRICTIVE TRADE PRACTICES COMMISSION

R.T.P.C. 24

HEARINGS RELATED TO THE MANUFACTURE, DISTRIBUTION
AND SALE OF DRUGS

HEARINGS

HELD AT

O T T A W A

VOLUME 1-3

JULY 4, 5 and 6, 1961

Transcriptions reprinted and distributed by the
Canadian Pharmaceutical Association



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Professor H.J. Fuller



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INQUIRY UNDER SECTION 42
OF THE COMBINES INVESTIGATION ACT

Relating to the manufacture, distribution and sale
of drugs

By Director of Investigation and Research
Combines Investigation Act

COMMISSION:


C. RHODES SMITH, Q.C. -- Chairman

A.S. WHITELEY, M.A. Member of
the Commis-
sion

PIERRE CARIGNAN, Q.C. Member of
the Commis-
sion

F.N. MACLEOD Combines
Officer,
representing the Director of Investi-
gation and Research

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C/dpw

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3 THE CHAIRMAN: Ladies and gentlemen,
4 as you no doubt know what we are beginning this
5 morning is a series of hearings on an inquiry
6 relating to the drug industry, that is the manu-
7 facture, distribution and sale of drugs.

8 This is a public hearing, as was
9 ordered recently. The Commission will be hearing
10 the representations by those who wish to appear
11 here during the course of the next two or three
12 days and I might say that we will be having a
13 hearing in Halifax on Monday next. We think it
14 will only last one day. We will be having hearings
15 again in Winnipeg, beginning on the 17th of July
16 and we cannot say how long those hearings will
17 last; maybe two or three days.

18 We have tentatively set the 20th of
19 July in Regina but we are not yet certain whether
20 there will be any hearing there.

21 We have set the 24th of July for
22 hearings in Edmonton. Tentatively we have set
23 the 27th of July for Calgary and again we do not
24 know if there will be any hearings there as yet
25 because we have no intimation of any certain appea-
26 rances at that place.

27 Then we have set the 31st of July for
28 hearings in Vancouver. Again, tentatively the 3rd
29 of August in Victoria. For the time being we have
30 not arranged for any hearings in either Montreal



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3 or Toronto, that is at this date, for the reason
4 that at least two of the major associations who
5 could be interested in this inquiry have advised
6 us they would wish a considerable amount of time
7 to prepare their representations; they wish to
8 consult their affiliates across the country and
9 they have set a date in October by which they felt
10 they would be fully prepared to present whatever
11 information they desire to give to us.

12 We have in mind - we have not set the
13 exact date but we will be doing so very shortly -
14 meeting at the beginning of October in Montreal
15 and the latter part of October in Toronto. Our
16 expectation is that the hearings in Toronto will
17 complete the public hearings unless it should
18 develop that some organizations or individuals
19 feel it is necessary to present something further
20 to us after that date.

21 In that event we might conceivably
22 have another hearing in Ottawa to wind up the
23 hearings; but this is the schedule as it is
24 presently arranged.

25 I would like to have, first of all,
26 the names of those who are appearing on behalf of
27 any clients or organizations and an intimation as
28 to whether they desire to present briefs or make
29 any oral submissions to us during the course of
30 the hearings here in Ottawa.



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3 We know of some that will be appearing
4 before us and I want to be certain we know of all
5 those who desire to make representations and also
6 to know on behalf of whom any counsel or others
7 are appearing.

8 I might say, for Mr. Macleod who is
9 largely responsible for the preparation of this
10 document, with which you are all familiar, which
11 had a long title "Material collected for submission
12 to the Restrictive Trade Practices' Commission in
13 the course of an inquiry under Section 42 of the
14 Combines Investigation Act, relating to the manu-
15 facture, distribution and sale of drugs" - that is
16 the full title of this document. I think perhaps
17 we may refer to it as the "Green Book" from hereon
18 and perhaps save a little bit of time and we will
19 understand what we are looking at.

20 MR. HANSARD: My copy has black covers.

21 THE CHAIRMAN: You must have put them
22 on because the only ones I have have green covers.

23 Mr. Macleod, who prepared that, will
24 be appearing and assisting the Commission for the
25 purposes of elucidating or clarifying statements
26 which may be made or matters which arise in briefs
27 which are presented. His full name is F.N. Macleod.

28 We would like to have the names of
29 those who are appearing on behalf of either organi-
30 zations or clients.



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3 MR. HUME: Mr. Chairman, gentlemen, my
4 name is F.R. Hume. I am appearing on behalf of
5 the Canadian Pharmaceutical Manufacturers' Associa-
6 tion.

7 As you have been advised, this is one
8 of the associations that will require some time to
9 prepare its submission. I think you have indicated
10 that the October date is satisfactory. My presence
11 here this morning is just that this was the opening
12 session and I wanted to be present in case there
13 were some directions or instructions on procedure.
14 I do not think I will be taking any part in the
15 activities of the hearings here, at any rate, at
16 the present time.

17 MR. KIRK: My name is Mr. David Kirk.
18 I am Secretary-Treasurer of the Canadian Federation
19 of Agriculture.

20 I have a brief submission which I would
21 like to put before you.

22 THE CHAIRMAN: We have copies of your
23 brief.

24 MR. FRAWLEY: My name is J.J. Frawley.
25 I am appearing for the Province of Alberta, Mr.
26 Chairman.

27 I expect to have instructions shortly
28 as to whether or not the Province will be making a
29 submission. If they do, I assume they would like
30 to make it either at Calgary or Edmonton.



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3 THE CHAIRMAN: I might say, Mr. Frawley,
4 I have written to the Premier further advising him
5 of the date and asking him if the Edmonton hearing
6 will be a convenient time for the Government of
7 Alberta to present its material. Mr. Manning has
8 advised us that the Government of Alberta will be
9 making representations to us.

10 MR. FRAWLEY: I might say it is just
11 what I want to have those instructions and if they
12 are confirmed then I will communicate that to you
13 at the very earliest possible moment.

14 THE CHAIRMAN: Are there any others who
15 are representing clients here today or will be
16 speaking or representing any organizations, apart
17 from what I might call "clients".

18 MR. HANSARD: Mr. Chairman, my name is
19 Hazen Hansard of Montreal. I am here because three
20 regular clients of our firm happen to be mentioned
21 in what you have described as "this document".

22 I am entering an appearance on their
23 behalf. I have not been specifically retained
24 because of these proceedings. I think I am merely
25 here because of their excellent choice of legal
26 representation but I --

27 THE CHAIRMAN: Is there any better
28 reason, Mr. Hansard?

29 MR. HANSARD: I do have a preliminary
30 submission to make and I am appearing on behalf of



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These three clients who are Ciba Company Limited,
Charles E. Frosst and Company and Pfizer of Canada.

They are all mentioned in the green
book - not unfavourably I may say - but they are
definitely interested in what is going to take
place before you and I am here to represent their
interests.

At the moment I have only the prelimi-
nary submission to make. I will make no submission
on the merits of your inquiry today but I feel
certain I may have something to say at a later
stage of these proceedings.

THE CHAIRMAN: Are there any others?
Well then, Mr. Hansard, you have a preliminary
submission or representation to make. You might
make it now.

MR. HANSARD: Well, Mr. Chairman, first
of all I would like to make a comment and that is
in one statement "disgruntlement". I find it very
depressing that the Commission should have elected
to hold a series of hearings of this kind during
the long vacation. I am a practising lawyer and
we are accustomed to think of July and August as
being time when we can recuperate.

I think for the last several years you,
Mr. Chairman, have had to go overseas. I guess
you didn't have to go this year and in consequence
you are going to drive us all crazy all summer. I



1
2 protest.

3 THE CHAIRMAN: It is the month of June
4 when I went overseas.

5 MR. HANSARD: That is perhaps in a
6 lighter vein but what I would like now and I think
7 could be a useful thing for me to do would be at
8 the outset of these proceedings is to perhaps make
9 a few inquiries as to the ground rules under which
10 the Commission is proposing to proceed, because, as
11 you know, we have had some debate as to whether or
12 not this hearing should be public or private in the
13 ordinary course under the statute.

14 You have decided, Mr. Chairman, that
15 they shall be public and I would like to just say
16 a few things about that because, having made that
17 decision, I suspect there are members of the press
18 present, I think it would be a useful thing for
19 somebody - I might elect myself to do it to point
20 out just what the nature of this proceeding is.

21 Now, Mr. Chairman, the first thing,
22 as we all know, is that the general rule laid down
23 specifically in the Combines Investigation Act is
24 that all proceedings, until the report is made
25 public, if as and when there is a report by the
26 Minister - all proceedings are in private. The
27 statute is specific to that effect except by excep-
28 tion the Chairman of this Commission is given the
29 power to declare the whole or any part of all
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3 proceedings before this Commission - and I underline
4 "proceedings before this Commission" as being public.

5 Now, we have had a great deal of talk
6 about this green book and the first thing I wish to
7 emphasize, Mr. Chairman, is that it is not a procee-
8 ding before this Commission. It is in effect a
9 species of pleadings put forward, I suppose, by the
10 Director or by Mr. Macleod, who is its author, as I
11 understand it, on his behalf. It is of no higher
12 standing, even if these proceedings are public, than
13 would be a pleading before a court of law.

14 That is important because the reason I
15 am saying these things is that, as I think everybody
16 here knows, there have been some pretty startling
17 statements made in the press generally, not specifi-
18 cally, but generally about the drug industry and
19 those statements have at least to some extent been
20 drawn from excerpts from the green book, Mr. Macleod's
21 document.
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3 Now, that is an unusual document,
4 I think even unusual in your practice here. Mr.
5 MacLeod has been very careful to state at the
6 outset this isn't a report, although everybody
7 persists in calling it a report. He has also
8 been very careful to say it is not evidence. He
9 calls it in one place a statement of material.

10 Now, this inquiry is under Section
11 42, and Section 42 I think should be looked at.
12 It says:

13 "The Director upon his own
14 initiative may and upon direction
15 from the Minister or at the
16 instance of the Commission shall"

17 - this is the director -

18 "Shall carry out an inquiry
19 concerning the existence and
20 effect of conditions or
21 practices having relation to
22 any commodity which may be
23 the subject of trade or
24 commerce and which conditions
25 or practices are related to
26 monopolistic situations or
27 restraint of trade and for
28 the purposes of this Act any
29 such inquiry shall be deemed
30 to be an inquiry under Section 8."



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3 Now then the inquiry under Section
4 42 is an inquiry by the director; that is
5 specifically stated. I don't see how one
6 can get away with it - away from it, I should
7 say. Therefore the Director having made his
8 inquiry as he sees fit, then goes before
9 the Commission under Section 2 which says:

10 "It is the duty of the
11 Commission to consider any
12 evidence or material - that
13 is where material comes from
14 - brought before it under
15 Subsection 1 together with
16 such further evidence or
17 material as the Commission
18 considers advisable and to
19 report thereon in writing
20 to the Minister, and for
21 the purposes of this Act any
22 such report shall be deemed
23 to be a report under Section
24 19."

25 Now, the point I am making is this,
26 Mr. Chairman. The first point is the matter
27 is in the hands of the Director, who is the only
28 person authorized by the Statutes to make an
29 inquiry under Section 42. It is abundantly
30 clear. I had better identify the section. I



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2 have forgotten the number for the moment - 28.
3 All inquiries under this Act shall be conducted
4 in private except that the Chairman of the
5 Commission can order that all or any portion
6 of any proceedings before the Commission or any
7 member thereof shall be conducted in public.
8 My point is this, that while the matter is in
9 the hands of the Director performing the
10 function conferred upon him by Section 42 to
11 inquire, everything is in private.

12 That document, the green book is
13 part of his function. That document was in
14 private and it still is no more than
15 a pleading before this body, public hearing
16 before this body.

17 Now, one of the other strange
18 things about that document, Mr. Chairman, is
19 that having stressed it contains no evidence,
20 no witnesses have been examined, none of the
21 material that is set out in it is material
22 taken on oath unless some of the returns from
23 the companies were on oath - I am not sure of
24 that, but none of the other material is.
25 Having said that the document then goes on
26 to say it is the Director's considered view
27 that witnesses should be examined before
28 the Commission. I paraphrase because I
29 haven't got the document in front of me at the
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3 moment. That is certainly what is said. The
4 effect of that, Mr. Chairman, is to remove, if
5 it is legal and I querie that, to remove from
6 the function of the Director in inquiring,
7 the taking of evidence which you would normally
8 take at the inquiry stage and place it before
9 the Commission so that the taking of the
10 evidence then becomes a public matter when
11 you have decided to make the hearing before
12 the Commission public.

13 Now, I am not trying to throw
14 any monkey-wrench on the proceedings at all,
15 but I am stressing - I am stressing that what
16 has been done so far, what is proposed is to
17 remove, contrary to the Statute, a lot of
18 the material which would normally by Statute
19 have to be taken in private and put it into
20 the public field.

21 Now, we have had drawn to our
22 attention from time to time newspaper articles
23 and statements made in other places about
24 which I spoke a short while ago, which are at
25 least bordering on the unflamatory, and the
26 general theme of these newspaper statements
27 is that there is something funny going on in
28 the drug industry and it is a good thing it
29 is being brought up before the Restrictive
30 Trade Practices Commission under the Combines



Investigation Act.

The first thing I think should be strongly borne in mind by everybody concerned here, Section 42 is the section apart and has nothing to do with the ordinary proceedings of the Combines Investigation Act. This section was put in in 1952, when the Statute was amended following the MacQuarrie report, presumably to empower the carrying on of what the MacQuarrie refer to as empirical research. Since 1952 I have been meaning to look up empirical. I haven't yet done it. It is for research.

Now, that places the matter in an entirely different light which the public in no sense of the word appreciates. They hear the Combines Investigation Act and anybody that is involved in anything before the Combines Investigation Act in the eye of the public is immediately suspect. I suggest that this is a Section 42 inquiry and that no such implications should properly be drawn. I caution those who will be reporting these proceedings to bear that in mind and not draw improper implications. I also caution them not to take any excerpts out of the green book and out of context as has been done before and draw inferences from doing so.



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3 When that green book is read
4 as a whole I must say for Mr. MacLeod's benefit,
5 if you read it it is not too terrible unfair.
6 It is not too terribly unfavourable to the
7 industry. You can find pieces in it which
8 you could dress up to look terribly unfavourable.
9 I am cautioning anyone who choses to report what
10 goes on in these public hearings to report them
11 accurately and fairly and to remember that when
12 you embark on the reporting of proceedings before
13 a public body you must report those proceedings
14 and you must be very cautious about taking
15 material from the pleadings in a court and building
16 those up because pleadings don't enjoy the same
17 privilege as does the reporting, the fair and
18 accurate reporting of what goes on in the court.
19 The same thing applies here. I sincerely hope
20 that any reporting of these proceedings will
21 keep that very closely in mind.

22 Now, Mr. Chairman, having said
23 that, I understand from Mr. Hume that
24 his association is proposing to put in a brief.
25 My clients are members of the association and
26 it may be that my brief will cover the points
27 that we feel should be covered. Our position
28 is that we are not here setting ourselves up
29 as opposing this inquiry. We are not here
30 other than to see that those before this



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2 Commission keep things within due bounds and if
3 the occasion arises we feel that we should, and
4 I have spoken to you about this before, and
5 understand you agree, we should be given an
6 opportunity at the appropriate time if we find
7 it necessary to make an appropriate rebuttal.
8 For the moment therefore I have no submission
9 on the merits to make.
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2 THE CHAIRMAN: Mr. Hansard, the
3 Commission has decided not to put the witnesses
4 under oath in this inquiry, feeling that this is
5 not an inquiry under which any prosecution might
6 be in prospect at all. I was wondering whether
7 your comments mean, in your view, all witnesses
8 should be sworn. We haven't a hard and fast opinion.

9 MR. HANSARD: An inquiry, after all,
10 is directed at getting at the truth, and one of the
11 things that experience has taught over the years,
12 not only in courts, but in administrative bodies
13 reporting to somebody else who will take action on
14 that report, they must be certain that any material
15 put before them is true. If the Commission has the
16 opinion that any material put before it in the form
17 of a brief or orally should not be sworn to, if it
18 contains factual matter, it seems to me that that
19 opens the door to a lot of things being said care-
20 lessly, which if people knew they were going to be
21 sworn, wouldn't be said. Don't forget the overtones
22 of this matter are -- when you read in the public
23 press the drug prices in Canada are the highest in
24 the world and why, the overtones are that there is
25 something funny that brings this about. This may
26 not be true, but if it is true it is explainable,
27 and I am anxious to see that throughout any hearings
28 you hold that people are kept in due bounds, and
29 it seems to me the best way to keep them in due
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2 bounds is to have them stand behind their factual
3 statements by swearing to them.

4 THE CHAIRMAN: We hadn't arrived at
5 hard and fast opinion. I see no objection to
6 calling witnesses. We possibly may swear the
7 reporters if you want to make sure that everything
8 is taken down correctly. We have several reporters
9 for these hearings. I understand there are some
10 people who want to get a daily report, a daily
11 record.

12 MR. HUME: I wonder if I may just
13 add a question or two. First of all, I would like
14 to say that I associate myself with the remarks of
15 my learned friend, Mr. Hansard, and appearing as I
16 do on behalf of the Association I have been asked
17 by some of the members of the Association this
18 question. It is simply this, Mr. Frawley and I
19 had a recent, very pleasant and long experience
20 before the MacPherson Royal Commission on Transpor-
21 tation, and there, when a witness came forward and
22 questions were asked of a nature which might be of
23 benefit to one's competitors, or of a confidential
24 nature, provision was made for it to be given in
25 confidence, and my question to you is that when
26 people come forward and an area is approached of
27 a confidential nature in the matter of company
28 procedures or something which might be unfortunate
29 if it were disclosed to the public, will the
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2 Commission consider keeping that private and on a
3 confidential basis? Or if a company comes forward,
4 has it to face making public trade secrets and
5 other matters? I wonder if there has been consi-
6 deration given to this, and whether or not you
7 might indicate publicly so that I might pass on
8 to the member companies just what they might
9 expect before the Commission?

10 THE CHAIRMAN: Our practice has
11 always been, and we endeavour to adhere to it
12 quite closely, that if evidence is about to be
13 tendered which is objected to on the ground that
14 it might afford some competitive advantage to
15 others in the industry, that such information
16 may be given privately to the Commission. We,
17 on occasions, have required that counsel for
18 those who might wish to ask questions about such
19 evidence might be furnished with it, but it would
20 not be made public to everybody in the courtroom.
21 We have endeavoured to see that no competitive
22 disadvantage results from the presentation of
23 evidence in that way, but we have also reserved
24 the right, if we feel it necessary, to use that
25 evidence in the preparation of our report to the
26 Minister. Normally there has been no difficulty
27 arise under that heading, because we have found
28 it possible to use the material in a manner
29 which didn't disclose competitive information,
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2 and we think it would be unfair to a particular
3 company to have trade secrets disclosed which
4 would help its competitors to beat it to the
5 punch. That is as far as we can go I think.

6 MR. HANSARD: On this itinerary
7 that you announced at the outset it is obviously
8 not going to be possible for all of us to be
9 present on all these occasions. Is there some
10 machinery set up to allow us to learn in advance
11 what will take place at the various hearings?
12 When I first discussed this at the commencement
13 of my protest about it, I understood that this
14 was to be a purely formal preliminary hearing,
15 and now I am told that there is going to be three
16 days of evidence, and I was wondering whether
17 there is some way we can work out a practice
18 where we can know in advance, for instance, who
19 is expected to be called, and what is to be dealt
20 with in Winnipeg on and following the 17th,
21 because it is just possible that people might
22 want to be in one place and not another, based
23 on what is going to happen.

24 THE CHAIRMAN: It is very difficult,
25 Mr. Hansard, to give you any accurate information
26 about that problem. Until very recently we have
27 had very few people communicate with us stating
28 that they desired to make representations to us,
29 very few indeed, and it was not until the
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2 announcement of the commencement of public
3 hearings that we started to get a list of people
4 who might wish to appear before us. We have
5 several who will be appearing in the next couple
6 of days here. Several of them are from depart-
7 ments of the Federal Government, who will be
8 talking about practical legal situations which
9 concern them, and some people will be submitting
10 briefs, and they will be discussing their briefs
11 and being questioned on them. Two are the
12 Canadian Association of Consumers and the
13 Canadian Federation of Agriculture. The others,
14 far as we have a list of them, apart from one
15 doctor, and I don't know what he will wish to
16 do, the others we have listed who have already
17 indicated their willingness and intention to
18 appear here are representatives of various depart-
19 ments of the Federal Government. In our next
20 hearing, which will be in Halifax, we have two
21 doctors, and again I don't know what they will
22 be talking about, and a representative of the
23 Hospital Insurance Commission, and a representa-
24 tive of the Maritime Federation of Agriculture.
25 Those are the only ones we have as yet, but we
26 never know who else will appear at the time of
27 the hearing.

28 MR. HANSARD: In addition, I am
29 urging that people who have factual statements
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2 to make should do so under oath. I presume they
3 all also be subject to cross-examination. In
4 st, Mr. Macleod said to me this morning when I
5 id how long will we be here for this time, he
6 id it depends on how far you fellows cross-
7 amine. Are there any limits to what is going
8 be listed to appear? Is there any issue that
9 can get our teeth into, or is your Commission
10 ing to invite the public to come forward and
11 ny member of the public, whether he has a real
12 interest or not, to come forward and make any
13 bmission he sees fit to make, whether it
14 relates to the manufacture, sale, and distribu-
15 tion of drugs or not, because I can foresee, and
16 say with great sympathy to the Commission, that
17 you may get yourself off into some awful side-
18 tracks. I wondered whether the Commission had
19 given any thought to delimiting the discussions.
20 When you held a Section 42 inquiry into the
21 question of loss-leader selling for instance,
22 there was something you could get your teeth
23 into, but here all I have seen so far are the
24 words manufacture, distribution, and sale of
25 drugs, whatever drugs may be, and that is an
26 awful wide field. Can you give me any guidance
27 on that?

28 THE CHAIRMAN: I think all we can
29 say is that it is a very wide field, as the
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2 title suggests, and we will try to see that
3 representations will keep within that wide field,
4 but it is very difficult to say in advance that
5 certain topics relating to drugs --

6 MR. HANSARD: Section 42 says:

7 ...an inquiry concerning the existence and effect
8 of conditions or practices having relation to any
9 commodity which may be the subject of trade or
10 commerce and which conditions or practices are
11 related to monopolistic situations or restraint
12 of trade..."

13 That must surely be the outside.

14 THE CHAIRMAN: That is the outside,
15 yes.

16 MR. HANSARD: It is pretty elastic.
17 have had you throw some pretty wide curves at
18 me under that section.

19 THE CHAIRMAN: I think perhaps,
20 since the evidence has been requested to be taken
21 under oath, we will swear the reporter.

22
23 --- A.A. Gallagher, Shorthand Reporter, duly
24 sworn.

25 MR. MACLEOD: I have just a few
26 very brief remarks explanatory on certain point
27 in the statement, and correcting certain typo-
28 graphical errors and that sort of thing.

29 It had been my intention to make
30



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2 reference to the fact that this was an inquiry
3 under Section 42, and the consequences that
4 followed from that fact, but I think that has
5 been adequately discussed by my learned friend.

6 The first point is paragraph 4 on
7 page 1, if I may just read the first two senten-
8 ces: "The inquiry relates to the sale and distri-
9 bution of drugs generally and information was
10 obtained about most aspects of the drug industry
11 However, to keep the inquiry within manageable
12 limits, detailed information about costs, markups,
13 selling prices and similar aspects was obtained
14 about two general types of drugs only - the anti-
15 biotic drugs and the tranquilizer or ataraxic
16 drugs. These drugs were chosen because they are
17 the two most widely-used types of ethical drugs
18 and because they are the types in respect of
19 which most complaints were received."
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I just draw the Commission's attention to the fact that the situation with respect to tranquilizers changed in 1959. The sale of tranquilizers in Canada appears to have reached its peak about that time, because prior to that date they were not on prescription. Some of them may have been, but by and large anyone could walk into the drugstore and buy tranquilizers and be supplied with them.

By Order in Council 274 of 30th July, 1959 certain amendments were made to schedule F of the Foods and Drug Act, that is on page 642 of the Canada Gazette, Volume 93, which had the effect of placing virtually all tranquilizers in the sense in which we are using them here at least on the prescription list. Now, that, of course, had some effect.



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3 Now, paragraph 6 of the introduc-
4 tion emphasizes that the inquiry relates princi-
5 pally but not exclusively to ethical drugs. The
6 concentration was on ethical drugs but you cannot
7 segregate any part of the drug field and consider
8 it in isolation.

9 Paragraphs 7, 8, 9, 10 and 11 deal
10 with the sources from which our information was
11 obtained and, with the single exception mentioned
12 in paragraph 10, no oral evidence was called.

13 Now, speaking particularly to the
14 point raised by my learned friend, the director
15 does not feel that the inquiry is incomplete for
16 that reason. It is felt that the basic facts
17 were looked into, determined and are set out.
18 However, it is recognized that the claims to be
19 drawn from the information may be subject to
20 discussion and that is particularly so in this
21 field because it has been a field in which
22 controversy has raged for several years.

23 It was felt that while the inquiry
24 was complete in the sense of determining the
25 basic facts, that it might be useful to the
26 Commission to have oral evidence.

27 For the reasons set out in para-
28 graph 466 on page 257 it was felt those witnesses
29 could best be heard before the Commission itself.

30 Paragraph 12 deals with certain



1
2 names and in at least one instance the informa-
3 tion was received, according to press releases.

4 There has been a further change in
5 the name of Merck and Company. I think its
6 Canadian operation - I am subject to correction
7 on this - its complete Canadian operations have
8 now gone back to the name of Merck Sharp and
9 Dohme.

10 Names, of course, have been problems
11 throughout because of the large number of firms
12 in the industry and the constant shifting and
13 amalgamations and other developments that were
14 taking place.

15 THE CHAIRMAN: Do you mean, Mr.
16 Macleod, Merck, Sharp and Dohme simply or Merck,
17 Sharp and Dohme division or Merck, Sharp and
18 Dohme Limited or what is it?

19 MR. MACLEOD: I am only relying on
20 press releases for this. Merck, Sharp and Dohme
21 Limited.

22 MR. DAVIDSON: Mr. Chairman, may I
23 speak up? It is Merck, Sharp and Dohme of Canada
24 Limited.

25 THE CHAIRMAN: You are --

26 MR. DAVIDSON: I am with the Inter-
27 national Division.

28 MR. MACLEOD: Just in passing, I
29 want to make one particular point which I am sure
30



1
2 is obvious but perhaps should be said that the
3 director has been concerned with the economic
4 aspects of the drug field. We have no statement
5 nor do we intend any expression of opinion on
6 such matters as the therapeutic qualities of
7 drugs or any similar medical or scientific ques-
8 tions. These are clearly beyond the scope of
9 the statement and no attempt has been made to
10 deal with it.

11 Perhaps I might just make a few
12 preliminary comments to the table and contents.

13 Chapter 2 deals with a variety of
14 matters; some of which will be developed further
15 by witnesses brought before you.

16 There is one very small point I
17 might mention. In paragraph 39, page 20, reference
18 is made to the ethical drugstores as those drug-
19 stores which specialize in pharmaceuticals and do
20 not normally feature soda fountains and magazine
21 racks and things like that. The practice in the
22 trade appears to be to call these people profes-
23 sional drugstores. I only mention that because
24 some witness might use the term.

25 THE CHAIRMAN: Does that mean what
26 you call "professional drugstores" deal only with
27 prescription drugs?

28 MR. MACLEOD: Not precisely only
29 with prescription drugs but it is quite common to
30



1
2 find places where there are a large number of
3 doctors located you will have a drugstore. They
4 would be dealing not only with prescriptions.
5 They would deal with other drugs but they deal
6 with drugs only, drugs or medical products, no
7 greeting cards, camera and films and that sort
8 of thing.

9 THE CHAIRMAN: Not a department
10 store.

11 MR. MACLEOD: Not a department
12 store. I merely point out that the term "profes-
13 sion" appears to be coming into general use for
14 that type of store.

15 In Chapters 3 and 4 sales tax,
16 tariff and patents are dealt with.

17 Again I need hardly mention this
18 but the director has been concerned with the
19 sales taxes and tariffs as they are. The question
20 of the rates and any such matter as that is some-
21 thing to be determined by Parliament or by agencies
22 specifically designated for that purpose.

23 The director simply has taken the
24 rates as they are and inquired as to the effect
25 which those matters have. The question of the
26 patent aspect and compulsory licensing is discussed
27 at some length throughout the statement. The
28 director is not at all concerned with the question
29 of whether compulsory licensing should be allowed
30



1
2 or whether it should not be allowed. The Parlia-
3 ment of Canada has laid down certain rates and
4 the statement is directed merely at determining
5 from those rates to be operated whether they
6 had been working satisfactorily or not. He is
7 not concerned with the soundness of the rates
8 themselves. That is a matter for Parliament.

9 In Chapter 6 there is one point.
10 In paragraph 109, page 61, drug firms are classi-
11 fied into various types. I think it should be
12 recognized this is a pretty broad classification
13 intended only as a generalization. The types
14 of firms in this industry are many and varied
15 and there are undoubtedly numerous firms which
16 will not fit neatly into any one of the types
17 outlined but we think that generally that is a
18 fair description of the industry.

19 In Chapter 7 there is a slight
20 typographical error in a couple of tables, per-
21 haps three tables. Table 9 on page 73, if you
22 will look at the second enclosed block the first
23 line of which is "Value of merchandise stock"
24 and the second line of which is "Annual rate of
25 turnover", you will find along the line after
26 "Annual rate of turnover" a percentage sign.
27 Obviously that should not be there. The annual
28 rate of turnover is 3.5 times, not 3.5% and the
29 same unfortunate addition of a percentage sign
30



1
2 is carried into Table 12 and Table 14 on page
3 75 and 77 respectively.

4 MR. HUME: What is the second page?

5 MR. MACLEOD: 75 and 77.

6 I believe I need say nothing about
7 any of the chapters down to Chapter 14 but you
8 will note that Chapter 14 deals with profits.
9 Of course these are the profits as shown in the
10 balance sheets of the companies. Chapter 15
11 deals with costs and selling prices and those
12 two aspects have been separated in the statement,
13 not only for convenience of term but to emphasize
14 the point which is made several times in the
15 statement that the difference between the cost
16 of raw material and the selling price of the
17 final drugs is not to be confused with profit.
18 That is something else again.

19 In Chapter 16 comparative prices
20 are dealt with. Unfortunately an error has
21 crept in in the figures at the bottom of page 212.
22 With respect to the drug perphenazine sold by
23 Shearing under the name of Trilafon, the U.S.
24 prices are prices to the druggist. The Canadian
25 prices shown are the prices to the public so
26 that we are comparing by some unfortunate error
27 prices at a different level of trade.

28 I find on checking that the U.S.
29 selling prices to the public are not available
30



to be at least, although the prices to the
druggists are and are as set out there except
the Canadian prices will have to be amended to
the prices to the druggist and these are respec-
tively instead of \$4.30 it should be \$2.58.
Instead of \$37.90 it should be \$22.74.

THE CHAIRMAN: \$22.74.

MR. MACLEOD: Yes sir.

Instead of \$8.35 it should be
\$5.01 and instead of \$70.70 it should be \$42.42.
Now, those corrected prices may be checked by
reference to page 195 where a whole series of
prices of these products are set out, that is
less retailer, hospital, and hospital in quan-
tity.

My final remark is about prices
generally; that prices for some drugs remain
the same and prices of some drugs change.

Beginning at paragraph 8 and
continuing throughout the statement the dates at
which prices were in effect are given. We have
attempted in every case where the price is set
out to say this price was in effect on "X" date
and the prices set out in the statement are, of
course, not necessarily the prices that are in
effect today. The date on which they are in
effect is given.

There is, of course, a note at



1
2 the end of paragraph 440 at the top of page 247
3 referring to the fact that just at the time the
4 statement was being typed the presses and other
5 sources of information, trade journals, carried
6 references to price changes, particularly price
7 reductions. It was not possible to get detailed
8 information in time to include it in the state-
9 ment.

10 I think those are all the comments
11 I wish to make at this time about the statement,
12 sir.

13 I think I gave you the name of a
14 gentleman from the National Revenue this morning
15 as Mr. Dikeman. I stand corrected. It is Mr.
16 Deachman. That is the correct pronunciation.

17 MR. FRAWLEY: Mr. Macleod, just on
18 the last point, at the top of page 247, when you
19 refer to the fact that more detail would be
20 obtained and made available to the Commission,
21 was there any intention of filing something
22 which could be made part of the Green Book?

23 MR. MACLEOD: The Commission's
24 attention was specifically drawn to that para-
25 graph of the statement and, I am subject to
26 correction by the Commission, of course, but it
27 is my understanding that the Commission has
28 taken steps to get up to date price lists.
29
30



P. BRETT, sworn.

33

MR. FRAWLEY: It may not turn out to be necessary at all, Mr. Chairman. I simply thought if anybody were commenting on prices and they weren't correct they could be corrected if the correction were added in a sort of supplement to this green book. It is merely a suggestion.

THE CHAIRMAN: We have requested from all of the drug manufacturing companies they supply us with their price lists if they have price lists and their discounts to various classes of purchasers. We have been receiving those in very large numbers.

MR. FRAWLEY: If anybody wants them I take it upon application to the Commission they could be told what they are?

THE CHAIRMAN: There is no necessary secrecy except there might be some competitive question. We want to be careful about that.

That would seem to conclude the preliminary statement of counsel and representations. I think we might call our first witness. Perhaps we could have Mr. Deachman. I understand he is here. What is your full name?

MR. DEACHMAN: J.S. D-E-A-C-H-M-A-N.

THE CHAIRMAN: Could we have one



1
2 of your first names?

3 MR. DEACHMAN: J. S-T-E-W-A-R-T.

4 MR. HANSARD: I am sorry I
5 didn't get that.

6 THE CHAIRMAN: J.S. Deachman.

7 Mr. MacLeod, would you ask the
8 questions?

9 J.S. DEACHMAN, sworn

10 MR. MACLEOD: Where are you
11 employed, Mr. Deachman?

12 MR. DEACHMAN: Department of
13 National Revenue, Customs Division.

14 MR. MACLEOD: What is your
15 position?

16 MR. DEACHMAN: Appraiser.

17 MR. MACLEOD: As appraiser do you
18 deal with particular commodities?

19 MR. DEACHMAN: Quite a few
20 commodities, drugs and chemicals included.

21 MR. MACLEOD: Drugs and chemicals
22 included. What does the term "appraiser" imply,
23 what type of work do you do?

24 MR. DEACHMAN: It has to do with
25 establishing the valuation of goods for duty
26 purposes and the classification for rates of
27 duty.

28 MR. MACLEOD: Now, what are some
29 of the primary considerations in respect to any
30



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Deachman, dir 35
(MacLeod)

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2 duty when you are determining the rate of
3 duty which applies? Does the country of
4 origin have something to do with it?

5 MR. DEACHMAN: Yes.

6 MR. MACLEOD: How does that
7 affect the rate?

8 MR. DEACHMAN: There are three
9 divisions of tariff, British Preferential,
10 Most Favoured Nation and General Tariff.

11 MR. MACLEOD: Are the tariffs
12 normally in - are the rates normally in an
13 ascending order?

14 MR. DEACHMAN: Yes.

15 THE CHAIRMAN: You said ascending?

16 MR. DEACHMAN: Ascending from
17 British Preferential.

18 MR. MACLEOD: British Preferential
19 would be the British Empire.

20 MR. DEACHMAN: All British countries
21 with the exception of Hong Kong.

22 MR. MACLEOD: With the exception
23 of Hong Kong. Where would the United States fall?

24 MR. DEACHMAN: Most Favoured Nation.

25 MR. MACLEOD: What about most
26 European countries?

27 MR. DEACHMAN: They are mostly
28 Favoured Nations and the exceptions are perhaps,
29 East Germany and Romania.
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MR. MACLEOD: Italy?

MR. DEACHMAN: Most Favoured
Nation.

MR. MACLEOD: Holland?

MR. DEACHMAN: Most Favoured
Nation.

MR. MACLEOD: France?

MR. DEACHMAN: Most Favoured
Nation.

MR. MACLEOD: Apart from the
country of origin does the question of whether
the product is made in Canada or of a class
or kind made in Canada affect the rate of duty?

MR. DEACHMAN: With respect to
drugs which are not specifically provided for
under the Tariff the kind is the determining
factor with respect to tariff classification.
That means it has got to be the exact chemical.
It has to be the same. With a chemical it
would have to be the same. With a chemical
it would have to be a chemical of the same
quality. When dealing with the application
of a dumping duty it is class or kind which is
a broader interpretation. That is where
competitive chemicals and competitive drugs come
into the picture.

MR. MACLEOD: Before we get
dumping duties is this volume that I am showing



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Deachman, dir 37
(MacLeod)

1
2 you, the Office Consolidation of the Customs
3 Tariff Act and the schedules - are you familiar
4 with that volume?

5 MR. DEACHMAN: Yes, the question
6 is whether you have it up to date or not. That
7 is all.

8 MR. MACLEOD: Yes. Can you tell
9 me what items drugs and chemicals - let us take
10 drugs.

11 MR. DEACHMAN: Most single chemicals
12 or single drugs are 208t.

13 MR. MACLEOD: Just a moment, 208.

14 MR. DEACHMAN: Tariff item 208 of
15 kind not made in Canada and the rates of duty
16 under that is free British Preferential, 15
17 per cent Most Favoured Nation and 25 per cent
18 General Tariff.

19 MR. MACLEOD: Do you say most
20 single...

21 MR. DEACHMAN: Most single chemicals
22 and drugs. If these particular drugs are of a
23 kind made in Canada they are 711. That is an
24 enumerated item. The rates of duty under
25 that item are 15 per cent, 20 per cent and 25
26 per cent.

27 MR. MACLEOD: Yes.

28 MR. DEACHMAN: Now, there are a few
29 drugs, there are a number of drugs specifically
30



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Deachman, dir 38
(MacLeod)

provided for in the tariff. Certain
injectables 206a are free of any tariff.

THE CHAIRMAN: What is that?

MR. DEACHMAN: Injectables, drugs
which are injected.

THE CHAIRMAN: Injectables.

MR. DEACHMAN: For instance liver
extract and pollens, that sort of thing. That
is 206b. There is the dextrose solutions, they
are free. There is the botanical drugs, they
are free under 204.

MR. MACLEOD: So far you have been
speaking largely of single drugs or is a drug...

MR. DEACHMAN: Compounded medicines
are dutiable under Tariff 220. Rates of duty
are graduated depending on alcoholic content.
They start off with non-alcoholic. That is
British Preferential $17\frac{1}{2}$ per cent, Most Favoured
Nation 20 per cent - that $17\frac{1}{2}$ per cent is
subject to a discount of 10 per cent that makes
it $15\frac{3}{4}$ per cent net.

THE CHAIRMAN: Those are non-
alcoholic?

MR. DEACHMAN: Up to $2\frac{1}{2}$ per cent
of proof spirit. From $2\frac{1}{2}$ per cent up to 40
per cent proof spirit the rate is 25 per cent
Most Favoured Nation which applies in this case
to Great Britain. It would apply to Great



Deachman, dir 39
(MacLeod)

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2 Britain, 25 per cent to all British countries
3 and all Most Favoured Nation countries and 60
4 per cent in the General.

5 When the preparation is more than
6 40 per cent proof spirit the rate under British
7 Preferential and Most Favoured Nation is
8 \$2.00 per imperial gallon and 20 per cent ad
9 valorem. General tariff \$3.00 per imperial
10 gallon and 30 per cent ad valorem.

11 MR. MACLEOD: What is the
12 significance of the note there to the effect
13 that "drugs, pill mass and preparations not
14 including pills or medicinal plasters recognized
15 by the United States Pharmacopeia, the Canadian
16 Formulary or the French Codex" shall not be held
17 to be covered by this item.

18 MR. DEACHMAN: That will revert
19 to 220a. The rates are practically the same.

20 MR. FRAWLEY: 220a?

21 MR. DEACHMAN: 220a.

22 MR. MACLEOD: Would these items
23 that you just listed and explained to us cover
24 most of the drugs imported into Canada?

25 MR. DEACHMAN: Yes.

26 MR. MACLEOD: Now, drugs come in
27 in different forms. By that I mean finished
28 dosage form, complete package, in bulk, semi-
29 manufactured and the like. Does that have any
30



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Deachman, dir 40
(MacLeod)

effect?

MR. DEACHMAN: Not on the
classification. It does on the valuation, of
course.

MR. MACLEOD: Perhaps you would
just explain that to us, how it effects the
valuation.

MR. DEACHMAN: Well, suppose a
company - of course, most of the companies that
operate - a lot are subsidiaries of United States
companies. Suppose a company in the United
States went into the open market and bought said
chemical, bought in large quantity. We wouldn't
accept large quantities, we would advance it
5 per cent when coming into Canada. That is
the portion that came into Canada from the
Home Drug Company.

MR. MACLEOD: Yes.

MR. DEACHMAN: If they took that
chemical and mixed that up and combined in the
sense of mixing we would advance the cost of
that chemical and the cost would include material
labour and overhead. We would advance it up to
50 per cent as under Section 38 of the Customs
Tariff Act. If it came in as finished material
in bulk for packaging we would advance the cost
by 75 per cent, still under Section 38 of the
Customs Act. If it came in - if they came in in



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Deachman, dir 41
(MacLeod)

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2 packages unlabeled with trade marks or anything
3 like that to be repackaged the advance would be
4 100 per cent.

5 MR. MACLEOD: Yes.

6 MR. DEACHMAN: Those are fairly
7 arbitrary. Some day we might get a little more
8 thoroughly into that.

9 THE CHAIRMAN: I was wondering,
10 Mr. Deachman, could you tell us a little further
11 what is the basis of the percentages?

12 MR. DEACHMAN: We have worked it out
13 through, trying to get the average mark-up. If
14 we find these mark-ups are effective we will take
15 advantage of that. We didn't go above it. We
16 have worked on the average.

17 THE CHAIRMAN: What you are seeking
18 to reach is...

19 MR. DEACHMAN: The fair market value.

20 THE CHAIRMAN: Average of what the
21 prices might be.

22 MR. DEACHMAN: Were sold on the open
23 market.

24 THE CHAIRMAN: Between an independent
25 seller and independent buyer.

26 MR. DEACHMAN: If this particular
27 mixture should be sold on the open market we would
28 take the open market prices.

29 THE CHAIRMAN: The value for these
30



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Deachman, dir 42
(MacLeod)

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2 purposes that you are trying to arrive at is
3 the fair market price.

4 MR. DEACHMAN: That is what we
5 are trying.

6 THE CHAIRMAN: In the country of
7 origin.

8 MR. DEACHMAN: Like quality and
9 like conditions of sale.

10 THE CHAIRMAN: Well then, assuming
11 a large company in the United States sells only
12 to wholesalers there at a certain discount and that
13 it sells to its subsidiary in Canada at a lower
14 price than it sells to the wholesaler in the
15 United States, what happens there?

16 MR. DEACHMAN: The wholesale price,
17 unless there were other people in the United
18 States who were in the same, sold the same drug
19 there under the same conditions we would use the
20 wholesale price. That would be the only open
21 market price there was.

22 THE CHAIRMAN: The effect would be
23 that the American company would have to bill its
24 Canadian subsidiary at the wholesale price?

25 MR. DEACHMAN: Providing we couldn't
26 go to the trade and find some competitor.

27 THE CHAIRMAN: Taking it a step
28 further, assuming that the American company had
29 a national distributor in the United States and
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Deachman, dir
(MacLeod) 43

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sold to the national distributors at prices below
the wholesale price would you accept that price?

MR. DEACHMAN: Provided that is the
price in the trade.



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Deachman 44
dir (Macleod)

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/dpw

MR. MACLEOD: Now would you say something about made in Canada rulings in respect to drugs? Is it the particular drug or the class of drug that counts?

MR. DEACHMAN: It is pretty much class. For instance, you mentioned tranquilizers. We wouldn't distinguish, if there is one tranquilizer made in Canada we say class. Take Salk vaccine. When that originally came on the market it was unique, and we said it is a class. When it comes to sedatives, we don't make a distinction.

MR. MACLEOD: Although a particular drug contained in a particular product which is not made in Canada, it would nevertheless be classified made in Canada?

MR. DEACHMAN: It would be classed as a class made in Canada for dump-duty purposes, but not in accordance with Tariff Item 211. There is a distinction.

MR. MACLEOD: If it was priced to the Canadian buyer at what you consider a fair market value in the country of origin, it would pay a lower duty?

MR. DEACHMAN: Yes, if it was not made in Canada, but when we come to the dump-duty, a particular drug would have to conform to in general whether it was a class or kind, made in



Deachman 45
Mr (MacLeod)

1
2 Canada, for dump-duty purposes we would say it
3 is a class.

4 MR. MACLEOD: Would that apply to
5 laxatives?

6 MR. DEACHMAN: We wouldn't apply
7 it to laxatives, no.

8 THE CHAIRMAN: Or laxatives made
9 in Canada?

10 MR. DEACHMAN: Yes.

11 MR. FRAWLEY: I find on page 27
12 and 28 of the Green Book certain tariff items
13 are set out, and I would like to ask Mr. Deach-
14 man if he has looked at those pages, and if they
15 do comprise all of the tariff items with which
16 one might be concerned in this inquiry?

17 MR. DEACHMAN: No, I haven't seen
18 the Green Book.

19 MR. FRAWLEY: It was recently
20 stated in the Tariff Board inquiry into oil, gas,
21 and machinery, and it was prepared for the use
22 of the people participating, a list of all the
23 tariff items with which they might be concerned.
24 They are not very long, and I would be very
25 happy to content myself with what is on pages
26 27 and 28, but I would like confirmation from
27 the Customs appraiser.

28 MR. DEACHMAN: May I take these
29 and compare them?
30



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3 MR. FRAWLEY: Yes, I don't ask for
4 it immediately, but if you could state to the
5 Commission at some time that these two pages do
6 indeed cover all the tariff items concerning
7 this inquiry?

8 THE CHAIRMAN: In addition to what
9 he has stated this morning.

10 MR. FRAWLEY: Yes.

11 MR. HUME: Mr. Deachman, there is
12 one point in your evidence that occurred to me
13 I might just, for my own benefit, clarify. Do
14 I understand that it is the practice of the
15 department, in trying to achieve the fair market
16 value of the country of origin under Section 38,
17 if an American drug manufacturer was able to buy
18 raw material at a large quantity, and was then
19 sending some of that quantity to its Canadian
20 subsidiary, that you advance by some arbitrary
21 figure the cost, in order to retrieve the duty?

22 MR. DEACHMAN: That would be only
23 in a case where we cannot get the fair market
24 value on the quantity shipped to Canada.

25 MR. HUME: So the advance is on
26 the value for the purposes of retrieving duty?

27 MR. DEACHMAN: Yes.

28 MR. HUME: That would result in
29 the Canadian subsidiary paying a higher duty
30 than otherwise he might?



Deachman 47
or ex

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3 MR. DEACHMAN: If he was in a posi-
4 tion to pay the quantities which the home company
5 was in a position to purchase.

6 MR. HUME: Taking the population
7 differential, one could assume that the Canadian
8 subsidiary is not able to buy that quantity?

9 MR. DEACHMAN: That is right.

10 MR. HUME: Is the Canadian subsi-
11 diary buying a smaller portion of this paying a
12 higher duty -- it would be normal that the cost
13 of the product in Canada would be higher than
14 the cost in the United States of the finished
15 product?

16 MR. DEACHMAN: That is right.

17 MR. FRAWLEY: Why do you find it
18 necessary to do what you do then?

19 MR. DEACHMAN: In many cases where
20 the home company would be quite willing to buy
21 a large quantity and allow their Canadian subsi-
22 diary to have it at the same price they purchase.

23 THE CHAIRMAN: There are no further
24 questions. Thank you Mr. Deachman.

25 I think we have the representative
26 of the Canadian Association of Consumers here?

27 --- Mrs. Beryl A. Plumptre, duly sworn.
28

29 MRS. PLUMPTRE: I do so swear, but
30



Plumptre
dir

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1
2 I must say a lot of it is opinion, and not fact.

3 THE CHAIRMAN: I think perhaps you
4 might proceed to read your brief and make any
5 comments you wish to make as you proceed.

6 MRS. PLUMPTRE: Before reading the
7 brief, I would like to make clear that usually
8 when our Association presents a brief to a Royal
9 Commission, or any government body, we try to
10 circulate the brief to the Provincial Associations
11 for their views and opinions on it. This brief
12 has not been circulated to our members, but has
13 been compiled by the Committee of our National
14 Executive, and the question of high cost of drugs
15 has been discussed at many of our meetings, and
16 this brief has been prepared within the policy
17 laid down by our meetings, but it is really
18 conclusions drawn by our National Executive from
19 material provided by your Director of Investiga-
20 tion and Research, based, as far as your conclu-
21 sions are concerned, from the material in this
22 Green Book.

23 We are a voluntary organization
24 and don't have facilities for undertaking
25 investigations, but we do know that the consu-
26 mers of Canada are very concerned with this
27 problem, and our conclusions are based upon
28 your material.

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Plumptre
dir

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SUBMISSION BY THE CANADIAN ASSOCIATION OF CONSUMERS

Appearance: Mrs. Beryl A. Plumptre

MRS. PLUMPTRE: Gentlemen, we have read with much interest the material collected for submission to the Restrictive Trade Practices Commission relating to the Manufacture, Distribution and Sale of Drugs. To us, this material indicates that consumers are being charged excessive prices for the new ethical drugs, and that both the manufacturing and retail sections of the industry are pursuing policies which limit price competition and act in restraint of trade. We consider these policies to be detrimental to the public interest. We therefore request your Commission to undertake a full investigation of this industry.

In recent years, our Association has received many complaints as to the high cost of drugs, especially the new ethical drugs. Prior to the publication in the press of the comparison of prices of drugs in various countries, as presented to the Kefauver Committee in the United States, Canadian consumers in general, while somewhat dismayed by the high prices of drugs, appeared to believe that such high prices were justified by our high standard of living, and by the expenditures made by drug manufacturers on research and on the maintenance of quality



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3 and purity of their products. Indications of
4 this attitude are shown by the resolutions
5 presented to our Annual Meeting in 1958 from
6 three of our Provincial CAC branches requesting
7 our National Association to ask the Federal
8 Government to lessen the consumers' burden of
9 high drug prices by removing the Federal Sales
10 Tax.

11 I should say perhaps, Mr. Chairman,
12 that we have done that on several occasions.

13 Since the release of the statis-
14 tics submitted to the Kefauver Committee which
15 showed that Canadians have to pay prices for
16 drugs which are among the highest, if not the
17 highest in the world, consumers have become more
18 disturbed and less willing to accept these
19 prices as being fair and reasonable. Speakers
20 at meetings of CAC branches across the country
21 have found this subject to be one of the greatest
22 interest and concern. Members have wanted more
23 information on pricing policy, and have held
24 meetings, panel discussions, etc. on this subject.
25 When informed of the investigation being under-
26 taken by the Department of Justice members have
27 expressed satisfaction that some authoritative
28 information would be available to the public.

29 Before making further comment on
30 some aspects of the Submission of the Director



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dir

of Investigation and Research, we wish to emphasize the unusual position of the consumer in relation to the ethical drug industry. We concur in, and we wish to stress the statement in paragraph 53 of the Submission. In making purchases of ethical drugs, a consumer is not able to exercise his usual consumer prerogatives. In these transactions, the doctor orders the drug and the consumer pays the price. Since these drugs are only ordered in times of illness, the consumer has no choice as to whether or not he should make the purchase. He is a captive buyer. Moreover, he usually has little or no knowledge of the drugs ordered. Nor does he usually have time or opportunity to shop around for the best price. As a result, the consumer needs, in this field, special protection both as to quality and as to price.

Canadian consumers are fortunate in that they are able to make drug purchases with confidence that the drugs they secure from their pharmacist are the exact drugs of a recognized standard and quality, as ordered by the doctor. But from an examination of the Submission under consideration, we can only conclude that, for many of these drugs, consumers cannot purchase with confidence that they are being charged prices which are fair and reasonable.



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We turn now to a consideration of the Material Submitted by the Director of Investigation and Research.

We appreciate the fact that the high prices of drugs are in part due to the high standard of living in Canada and in the United States. However, the Submission under consideration indicates strongly that there are other factors which are contributing in no small measure to the high level of drug prices in Canada. The most important of these factors is the virtual elimination of price competition in both the manufacturing and retail sections of the industry.

The Manufacturing Industry

From the information contained in the Submission we conclude that as a result of the use of patents by drug manufacturers, Canadian consumers are being charged excessive prices for the essential, new, ethical drugs. To this we object strongly. We request the Commission to investigate these practices and to make recommendations which will end this monopolistic control of the ethical drug market.

Canada depends for most of her supplies of basic drugs on imports, chiefly from the United States. As a result, the price which Canadian consumers must pay for drugs



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3 secured by prescription must depend, to a major
4 extent, on the price at which U.S. manufacturers
5 supply these drugs to the Canadian market. In
6 the United States, drug manufacturers patent
7 their products and have a legal monopoly on the
8 sale of these drugs. Since there is no provi-
9 sion in that country for the issuing of compul-
10 sory licences (see page 247) manufacturers can
11 and do charge what the traffic will bear for
12 their products. These manufacturers also take
13 out Canadian patents for their products, and
14 through their Canadian subsidiaries dominate
15 this market, following the same pricing policy.

16 We understand that the provision
17 in Canadian Legislation for the issuing of
18 compulsory licences was designed to prevent the
19 development of such monopolistic situations, and
20 we are most disturbed by the Director's statement
21 that "the clear intent of the Act has been frus-
22 trated" and that "the provisions of the Patent
23 Act relating to compulsory licences appear to
24 have proved ineffectual" to combat the control
25 of manufacturers over the manufacture, importa-
26 tion and sale of drugs for which they hold patents.
27 Only a few compulsory licences have been issued
28 and it seems doubtful that patent holders have
29 issued many voluntary licences. Even where
30 these drugs are produced by a number of firms,



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2 whether by licence or agreement, price competi-
3 tion has not developed. Even if costs, as
4 reported, vary widely, prices for dosage forms
5 are "substantially uniform for all firms". As
6 a result of the ineffectiveness of the Canadian
7 legislation, it appears that manufacturers have
8 complete monopoly of the sale of their patented
9 products, and as in the United States, are
10 charging exorbitant prices -- what the market
11 will bear.

12 In recent years a small degree of
13 competition has developed from certain Canadian
14 firms who are importing drugs from some European
15 countries where drugs cannot be patented, and
16 selling them at prices usually much lower than
17 those charged by manufacturers selling similar
18 drugs under their brand names. Even although
19 these imports have consisted of a limited range
20 of products and not in all dosage forms, manufac-
21 turers have strongly resisted their appearance
22 on the market. One firm is being sued for
23 infringement of patent rights, and all these
24 importers apparently have to fight what appears
25 to be a "concerted campaign" to characterize
26 these imported drugs "as cheap imitations of
27 inferior quality". As consumers who benefit
28 from the lower prices charged by these firms
29 we resent strongly this campaign. We hope
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3 that more publicity will be given to the fact
4 that all drugs sold on the Canadian market must
5 meet the standards established by the Food and
6 Drug Directorate, and that drugs not meeting
7 these standards are not permitted by the Food
8 and Drug Directorate to enter our market.

9 Recommendations

10 1. We consider that, at the
11 present time, our patent legislation is being
12 used to protect the profits of the manufacturer
13 at the expense of the consumer. We maintain
14 that this monopolistic control of the drug
15 industry must not be permitted to continue.
16 we therefore recommend that the compulsory licen-
17 sing provisions be widened. We recommend that
18 with inventions relating to food and drugs,
19 compulsory licences of right to manufacture to
20 import and to sell be made available immediately
21 patent has been issued. At the time of applica-
22 tion, the applicant should be required to post a
23 bond to ensure payment of royalty fees. These
24 fees should be fixed by the Commissioner of
25 Patents, but be subject to appeal. We urge the
26 Commission to give this recommendation serious
27 consideration. Such compulsory licences to
28 manufacture, import and sell would, we suggest,
29 immediately introduce stronger price competition
30 in this field, and weaken the monopolistic control



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(MacLeod)

of patent holders.

2. The implementation of this recommendation would involve an expansion in the work of the Food and Drug Directorate. We therefore further recommend that the staff of the Food and Drug Directorate be increased to ensure a continuation of its high standard of quality control for drugs. This Directorate which is charged with the inspection of drugs sold in Canada has adequate powers under the Food and Drugs Act to ensure that all its standards of quality and purity are met by manufacturers, both domestic and foreign. Our Association considers that much more publicity should be given to the excellent protection which the Minister of this Department and the staff of the Directorate give to the Canadian public in this regard.

The opinion seems to be widely held that brand names are the sole criteria for judging the quality of drug products. We would certainly not wish to detract from the excellent work which reliable manufacturers carry on to ensure the high quality of their products. But not all firms maintain the same standards. In this regard the following statement from the Annual Report of the Food and Drug Directorate, March 1960, is significant: "There were 410 inspections of drug manufacturers and



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(MacLeod)

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2 distributors, with special attention being
3 directed to those firms whose control procedures
4 had been determined by previous inspection to
5 be less than the optimum". As consumers we
6 feel fortunate to have the protection of this
7 Directorate, and we consider that the Minister
8 should be given all possible assistance to
9 maintain the excellence of the work of the
10 Directorate.

11 3. We also recommend that a wider
12 use of the generic names of drugs be facilitated
13 and encouraged. This could only be achieved
14 with the cooperation of the medical profession
15 in ordering the drugs, and of the retail
16 pharmacists in stocking them. In most cases
17 the doctor is concerned with the medical needs
18 and not with the economic burdens of his patient.
19 We would like to see more interest by the
20 medical profession in the prices which patients
21 must pay for prescriptions. In some cases,
22 patients cannot afford, and, therefore, do not
23 buy the drugs prescribed. Acceptance of the
24 quality of drugs imported from countries other
25 than the United States and their use by the
26 medical profession would, we suggest, lead
27 eventually to common use of generic terms. We
28 would like to see drugs prescribed by their
29 generic names except in cases where brand names
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would ensure the use of special compounds made by particular firms. If drugs were ordered in this way, we hope that the ethical principles of retain pharmacists would ensure that prescriptions would be filled with the lowest-cost products.

4. Promotional Expenditures.

We are greatly concerned for two reasons that the control given to industry through patents should have resulted in the heavy promotion and advertising expenditures, many of which have been termed wasteful and unprofessional. In the first place there can be no doubt that the high level of these expenditures by Canadian manufacturers, amounting on the average to 25 per cent, and in some cases to more than 40 per cent of the value of net sales, are an important factor in raising the prices of drugs. We consider that these excessive expenditures which are difficult to justify should be reduced.

Secondly we are concerned that there is insufficient control of the quality of the promotional material which floods the medical profession. We are aware that the Food and Drug Directorate controls the advertisement (what might be termed the directions for use) which manufacturers insert in the packet of the sample of a new drug which goes to doctors, but



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there appears to be little or no control over the more spectacular promotional literature which does not always stress the limitations of the product. We have noted the concern of the medical profession on this matter, as expressed in articles in the C.M.A. Journal. We recommend that measures should be taken to control this promotional literature and to make available to doctors regular, concise and objective reports on new drugs appearing on the market. We suggest that these reports should be compiled by a committee of representatives from the medical profession and the Food and Drug Directorate, basing their reports on clinical tests of the manufacturers as reported in their submissions and of the Food and Drug Directorate. We suggest that such reports would facilitate the careful use of all new drugs and would do much to remove some of the basic objections of high-pressure promotion, especially that of encouraging the use of complicated and potentially dangerous drugs for trivial illnesses.

Research

Before discussing the policy of the retail druggists, we wish to comment briefly on the research expenditures of the drug manufacturers. Consumers are well aware of the great benefits they have received from the research programs of the



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(MacLeod)

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2 industry, both in Canada and in foreign countries,
3 Indeed, as indicated earlier, consumers in general
4 have felt that the cost of reseach was one factor
5 justifying the high cost of drugs. The Director's
6 submission should do much to put the cost of
7 research into its right perspective in consumers'
8 opinions. It is true that research is expensive, but
9 it is also profitable. Through the use of patents,
10 research has replaced price as the manufacturers'
11 most important competitive weapon. Because
12 pharmaceutical research concerns products affecting
13 the health of human beings, it is difficult to
14 avoid sentimentality in discussing the policy of
15 drug manufacturers. But the search for new drug
16 products is not dissimilar to that conducted by
17 manufacturers in general for new products which
18 will give them an advantage over their competitors.
19 It is difficult to escape the conclusion that much
20 of the research, now carried on by manufacturers
21 is not only wasteful of manpower and money but is
22 also of questionable quality.

23 The Retail Drug Trade

24 In this section of the drug industry
25 we find an unusual situation which we consider
26 detrimental to the public interest. The Director
27 has stated "It is....clear that there is virtually
28 no price competition in the sale of ethical drug
29 products at the retail level". Indeed it appears
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(MacLeod)

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2 from his submission that there is also little
3 price competition in sale of proprietary drugs
4 by drug stores. According to the Director, there
5 is no evidence that manufacturers are putting
6 pressure on retailers to maintain their listed
7 resale prices. But the druggists themselves are
8 strongly opposed to price competition at the retail
9 level, and most of them accept manufacturers' list
10 prices as the proper selling prices. Trade
11 associations appear to use strong moral pressure
12 to prevent price cutting, and in the pricing of
13 prescriptions most druggists follow schedules of
14 suggested prices prepared and circulated by local
15 or provincial associations. The report indicates
16 that the power of Pharmaceutical Associations is
17 sometimes used to 'discipline' pharmacist members
18 or drug stores for 'unethical practices' when
19 prescriptions are sold at competitive prices.
20 From the information in the Submission we conclude
21 that Resale Price Maintenance is an effective
22 policy of pharmacists giving them economic control
23 over the retail drug trade. We consider that this
24 policy denies to the consumer the protection of
25 price competition, and places on the shoulders
26 of the retail pharmacists a share of the
27 responsibility for the present high prices of
28 drugs. We request the Commission to investigate
29 fully this policy and its effects on the public
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(MacLeod)

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3 interest. Consumers appreciate the need for
4 regulation of the profession of pharmacy. Indeed
5 when buying ethical drugs we are completely
6 dependent on the integrity and care of the
7 pharmacist. But we cannot accept a continuation
8 of a policy by which Association price lists are
9 circulated with the aim of eliminating competition,
10 and we maintain that this practice should be
11 discontinued.

12 Respectfully submitted.

13 THE CHAIRMAN: Mrs. Plumptre, do you
14 wish to make any comments on the subject matter
15 of this brief?

16 MRS. PLUMPTRE: No, I don't think so.
17 Except to say that we have not dealt with things
18 which we know make the difference between the
19 price in the United States and the tariff. I
20 don't think this is the time to discuss whether
21 we thought the tariff was too high or too low, nor
22 have we discussed what we consider to be the
23 benefit to the consumer of taking off the sales
24 tax. These are matters outwith the Commission's
25 subject.

26 THE CHAIRMAN: The brief has
27 mentioned that you recommend the sales tax be
28 taken off.

29 MRS. PLUMPTRE: Yes.

30 THE CHAIRMAN: Mr. MacLeod, do you



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wish to question Mrs. Plumptre?

MR. MACLEOD: No, Mr. Chairman.

MR. BUCHANAN: Mr. Chairman, could I make a comment? My name is Buchanan, General Manager of Miles Laboratories. I was just thinking in relation to some of the ground rules that Mr. Hansard mentioned a little while ago. It seems to me that a lot of the evidence, if you like, which will be given here will be of the nature of hearsay. I am not sure of the legal term - perhaps secondary evidence. I am wondering if this great safeguard that the legal people have in cross-examination, if this isn't a consideration that perhaps this inquiry has. We have phrases like "It is... clear that there is virtually no price competition in the sale of ethical drug products at the retail level." Another comment, "It is difficult to escape the conclusion that much of the research now carried on by manufacturers is not only wasteful of manpower and money but is also of questionable quality." I realize the press is taking this down as it is said from the witnesses. But again we come to the ground rules where ultimately, let's say, the public becomes the jury in this. It seems to me there must be some thought on your part that there is an opportunity to be given by prepared people such as ourselves or whoever it may be to question, to



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2 cross-examine this evidence. I am not again,
3 with all due apology, familiar with the procedures
4 at inquiries, but this scares me a little bit.

5 MR. HANSARD: Perhaps I can ally
6 the gentleman's fears and say that, to the extent
7 I am permitted to do so, I intend to cross-examine
8 the witness.

9 THE CHAIRMAN: It is part of our
10 procedure; people who make statements of facts
11 and conclusions in briefs may be questioned about
12 them.

13 With respect to this particular brief,
14 a great deal of it is quoted from the Director's
15 Serial and the rest of it is based upon it,
16 so therefore the cross-examine will be in effect
17 directed both at the statements which are in the
18 brief and the things which are said in the green
19 book, at least to some extent.

20 MR. FRAWLEY: Mr. Chairman, as a
21 member of the bar, it struck me while I was
22 listening to the representative of Miles Laboratories
23 that you would allow the gentleman from Miles
24 Laboratories to cross-examine the witnesses.

25 THE CHAIRMAN: We don't object, and
26 I ask that any organization or manufacturers, if
27 they wish to direct questions, they may do so.
28 We are not limiting the questioning of witnesses
29 to people who happen to be members of the bar.
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3 MR. BUCHANAN: Mr. Chairman, on
4 this point of ground rules, with all due respect
5 to the witness, my feeling is that there will be
6 a great deal of irrelevant material coming in here.
7 For instance, "the heavy promotion and advertising
8 expenditures, many of which have been termed wasteful
9 and unprofessional", and so on, I wonder if this
10 gets to the heart of the problem. Perhaps it does,
11 and perhaps there will be some of these irrelevancies
12 creeping in and they are picked up by the press, and
13 they do have the effect which can, over the course
14 of these hearings, be rather derogatory and deprecatory
15 to the manufacturers. Again how much of this is
16 to be admitted in an inquiry of this sort. Can
17 we admit anything, everything, or is there a bar
18 on the point of irrelevancy?

19 THE CHAIRMAN: The inquiry is very
20 broad as you can see from the title of it, but the
21 questions which come up in the inquiry should have
22 some relation to this question of the restraint
23 of trade and monopoly situation, and if evidence is
24 given which can be argued successfully not related
25 to these matters, then they would be considered
26 irrelevant. But they are not irrelevant merely
27 because they happen to be derogatory, something
28 that someone may have done or be doing.

29 MR. HANSARD: It may, however, not be
30 evidence in the accepted sense. This is just the



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2 very sort of thing that I had in mind when I said
3 what I had to say at the outset. Little things
4 have slipped in: "To us, this material, this
5 green book, indicates that the consumers are being
6 charged excessive prices" - the word "excessive"
7 - and then it goes on: "for the new ethical drugs,
8 and that both the manufacturing and retail sections
9 of the industry are pursuing policies which limit
10 price competition and act in restraint of trade."

11 Now, the very first comment I can
12 make on a statement of that kind is that this
13 witness is trying to render a judgment on the
14 material submitted by the Directorate to the
15 Commission. That is not the function of a witness.
16 Now, in the ordinary course of proceedings the
17 witness would be asked questions and the questions
18 would be subject to objection if they were
19 obviously outside the field of the inquiry, and
20 the answers would be also subject to objection
21 if they were pure hearsay, as most of this
22 obviously is. But here I don't know what the
23 ground rules are. I do wish the opportunity of
24 cross-examination.

25 Are you proposing to take a break,
26 Mr. Chairman?

27 THE CHAIRMAN: We hadn't really
28 considered whether it might be necessary. Usually
29 we have a break for the benefit of the reporter.
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3 MRS. PLUMPTRE: Mr. Chairman, I
4 would like to say that this is material which has
5 been tabled in the House of Commons. It is there
6 available to the public. It is not just a report
7 to the Commission, and therefore I feel that my
8 organization as representing the consumers has
9 the perfect right to make any deductions. When we
10 see in this material such examples given to us by
11 the Research Director, upon whom we have complete
12 reliance, that we are being charged as consumers
13 prices - for example, take the price of Largactil,
14 which can be bought for 77 cents for the unit in
15 France and for which we must pay \$6.00 for the
16 unit here. We have no indication hat this is not
17 excessive.

18 THE CHAIRMAN: I think the suggestions
19 are largely that your brief consists to quite an
20 extent of your opinion deduced from what has been
21 said in the green book, which is a collection of
22 material made by the Director of Investigation and
23 Research and as to which manufacturers and others
24 such as druggist associations have not yet replied.

25 MRS. PLUMPTRE: Surely.

26 THE CHAIRMAN: There will be explanations
27 in the way of evidence given in the course of these
28 proceedings which may change to quite an extent
29 the opinion which people might have in reading the
30 green book as it is now. That is part of the



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2 objection; and, of course, as Mr. Hansard said,
3 there is in the legal sense the value of what
4 might be called hearsay.

5 MRS. PLUMPTRE: Yes.

6 MR. BUCHANAN: Mr. Chairman --

7 THE CHAIRMAN: I think perhaps, Mr.
8 Buchanan, we will have a short intermission,
9 about ten minutes.

10 ---Short recess.

11 THE CHAIRMAN: I think possibly I
12 should make it clear that, in the view of the
13 Commission, it is opinion and it is not given as
14 a statement of fact of which a person has personal
15 knowledge, even if it is an opinion based on
16 whatever material is referred to as its basis.

17 MR. HANSARD: That is the point. If
18 it is an opinion, then in judging its merits one
19 must find out what it is based on.

20 THE CHAIRMAN: I think it is reasonable
21 that questions may be asked to clear up any points
22 that have been made or stated in a brief.

23 MR. HANSARD: Now, Mrs. Plumptre, I
24 think everybody has sort of built me up as a sort
25 of formidable ogre, and I am not. I, like
26 yourself, am a consumer; in fact, you have but
27 to look at me to satisfy yourself that that is so.

28 Mrs. Plumptre, you are the President
29 of the Canadian Association of Consumers.
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Plumptre, cr-ex 69
(Hansard)

MRS. PLUMPTRE: Yes.

MR. HANSARD: Have you been that
long?

MRS. PLUMPTRE: Since last December.

MR. HANSARD: And I take it that you
long to that great group of consumers and people
are concerned with consumers, the housewife?

MRS. PLUMPTRE: Yes, I am that too.

MR. HANSARD: You told us quite fairly
the start that you were basing your submission
to you read to the Commission before the break on
the material that you had found in what is called
the green book, that is the statement submitted by
the Director of Investigation and Research; is that
correct?

MRS. PLUMPTRE: Yes.

MR. HANSARD: And you made no
independent research, you or your association, to
determine whether or not that statement was accurate.
You took that as a fact, did you?

MRS. PLUMPTRE: Certainly.

MR. HANSARD: And so that you, when
you rely on what is in that statement, are accepting
the Director's green book?

MRS. PLUMPTRE: Yes. We have had
experience of research done by government officials
and we feel that it is research upon which one can
rely entirely.



Plumptre, cr-ex 70
(Hansard)

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MR. HANSARD: And when the government official himself in his green book makes it clear that it does not purport to be the entire story or a complete report, you accept that too?

MRS. PLUMPTRE: I think we have tried to make that clear in our brief, that we have said it is indicated; we have used the same type of terminology.

MR. HANSARD: When you have used an expression such as "excessive prices", where did you get the word "excessive"?

MRS. PLUMPTRE: As I said just a minute ago, I don't know what you call excessive, but I think if a manufacturer does a great deal of research and spends a great deal of money, produces a product and takes out a patent and sells it in his own country for 77 cents, and then in this country - all I know is that I have to pay \$6.25 for the same unit, to me that is excessive.

MR. HANSARD: Have you ever bought that \$6.00 unit?

MRS. PLUMPTRE: No, but I know some of my friends have, and it is very expensive.

MR. HANSARD: \$6.00 is a lot of money in any language for a drug.

MRS. PLUMPTRE: Certainly. It depends



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Plumptre, cr-ex 71
(Hansard)

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2 on the drug. This particular thing I think is
3 excessive.

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5 MR. HANSARD: So when we find this
6 statement: "To us, this material indicates that
7 consumers are being charged excessive prices for
8 the new ethical drugs, and that both the
9 manufacturing and retail sections of the industry
10 are pursuing policies which limit price competition
11 and act in restraint of trade", you tell me when
12 you use the word "excessive" in that sentence you
13 are referring to this 77 cent item.

14 MRS. PLUMPTRE: No. I am giving that
15 as one item which sticks out in my mind from the
16 material, but I think in the material it is quite
17 obvious there are other items; and when we are
18 given figures - and I think it is shown in the
19 reports in the United States - that the prices of
20 these antibiotic drugs, their list prices seem to
21 be the same despite variation in costs, we tend to
22 query this.

23 MR. HANSARD: You have an inquiring
24 mind obviously.

25 Now, we will get along much faster
26 if I put the questions to you and you answer them.
27 You say that there are other examples which
28 justify your use of the words "excessive prices
29 being charged for the new ethical drugs." Will you
30 go along this far with me, that this 77 cent item



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Plumptre, cr-ex 72
(Hansard)

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2 which you mentioned as against \$6.00 is an
3 outstanding one which stuck in your memory because
4 of the disparity in the figures?

5 MRS. PLUMPTRE: No.

6 MR. HANSARD: Are they all in that
7 range?

8 MRS. PLUMPTRE: No. It is one that
9 is in the report and I just happened to remember
10 it. I don't say it is exceptional at all.

11 MR. HANSARD: Do you say it is typical?

12 MRS. PLUMPTRE: I don't think there is
13 enough range to say it is typical. I don't think
14 I am in a position to answer that.

15 THE CHAIRMAN: I think it is clear, Mr.
16 Hansard, that the evidence is based on the green book
17 and Mrs. Plumptre's organization doesn't purport to
18 say - in fact, she says it is not based on
19 independent research.

20 MR. HANSARD: The statement that I
21 am questioning the witness on at the moment is
22 not based on the green book, but it says: "To
23 us, this material indicates..." --

24 THE CHAIRMAN: It is an opinion.

25 MR. HANSARD: May I say that I am
26 querying the right of this witness to draw that
27 conclusion, and I think I am entitled to do that.

28 THE CHAIRMAN: I think it simply
29 amounts to this, that it is a statement of opinion
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Plumptre, cr-ex 73
(Hansard)

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2 which they have drawn. It is not a fact.

3 MR. HANSARD: Perhaps I am obtuse,
4 but when somebody says this material indicates
5 excessive prices, then I say that is not an
6 opinion, it is a statement of fact.

7 THE CHAIRMAN: That is not the way I
8 interpret the language. "To us" to me means "In
9 my opinion" or "In our opinion".
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MR. HANSARD: Is this submission of yours also based upon material put in before the Kefauver Committee in the United States?

MRS. PLUMPTRE: I have read most of it. It isn't based - I have only used it in reference, where I have referred to the material put in by the Research Director.

MR. HANSARD: I read this in your submission: "Since the release of the statistics submitted to the Kefauver Committee which showed that Canadians have to pay prices for drugs which are among the highest, if not the highest in the world, consumers have become more disturbed..." You are making a statement there on some statistics - I don't know what - submitted to the Kefauver Committee being released - I don't know by whom, and you say that is the effect. Is that what you are saying?

MRS. PLUMPTRE: May I ask if you have read the material in the Green Book, Mr. Hanson?

MR. HANSARD: The name is Hansard. Yes, I have.

MRS. PLUMPTRE: Didn't you see the figures published in the report? They have been referred to in the press.

MR. HANSARD: That brings me back - they have been referred to in the press, does



1
2 that make them any more so?

3 MRS. PLUMPTRE: Any more so what?

4 MR. HANSARD: Any more truthful?

5 MRS. PLUMPTRE: They are figures
6 put out by the State Department who gave them to
7 the Kefauver Committee

8 MR. HANSARD: Are you telling me
9 because material has appeared in the press that
10 necessarily makes them so?

11 MRS. PLUMPTRE: I didn't use that
12 expression. I said these things have been
13 published in the Kefauver Committee. They are
14 in the material put out by the Research Director.

15 MR. HANSARD: You also said just
16 before we had a break, I think, something had
17 been tabled in the House of Commons.

18 MRS. PLUMPTRE: The green material,
19 Green Book.

20 MR. HANSARD: Is tabled in the
21 House of Commons?

22 MRS. PLUMPTRE: I was in the
23 House of Commons when it was tabled.

24 MR. HANSARD: Did the tabling of
25 that Green Book add anything to the accuracy of
26 its contents according to you?

27 MRS. PLUMPTRE: I don't say it
28 had anything to do with the accuracy. It did
29 make it available to the public.
30



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2 MR. HANSARD: So if the contents
3 are not accurate, I don't say they are not but
4 to the extent they may not be accurate or
5 complete then people should not rely on them,
6 should they?

7 MRS. PLUMPTRE: I don't think I
8 could answer that question. I have given my
9 evidence on that material.

10 MR. HANSARD: I see, thank you.
11 Now, the most important of these factors, I
12 read in your submission, is the virtual elimina-
13 tion of price competition in both manufacturing
14 and retail sections of the industry. You say
15 there is a virtual elimination of price competi-
16 tion?

17 MRS. PLUMPTRE: It is a statement
18 made by the Director.

19 MR. HANSARD: It isn't yours, all
20 right. I am not going to get into a discussion
21 on patents with you. That is a technical subject.
22 I would like to ask you this. You have in some
23 place in your brief put certain material in
24 quotes. On page 3 I read "One firm is being
25 sued for infringement of patent rights, and all
26 these importers apparently have to fight for
27 what appears to be a 'concerted campaign' to
28 characterize these imported drugs 'as cheap
29 imitations of inferior quality'". Where did
30



1
2 that quote come from, those two quotes?

3 MRS. PLUMPTRE: From the material
4 put out by the Director of Investigation and
5 Research.

6 MR. HANSARD: That is also in the
7 Green Book.

8 MRS. PLUMPTRE: In the Green Book,
9 didn't you read it?

10 MR. HANSARD: I did read it. You
11 say that the material in the Green Book supports
12 the proposition that there is a concerted
13 campaign to characterize these imported drugs as
14 cheap imitations.

15 MRS. PLUMPTRE: I think if you read
16 the statement as I recall it it is there appears
17 to be, and I think that is the way it is stated
18 and I think we also have indicated the same thing.

19 MR. HANSARD: I see, that again is
20 not your statement. It is quoted from the Green
21 Book. I just wanted to be sure of your source.
22 Now, you will recommend that the licencing provi-
23 sions be widened. Have you made any study or
24 inquiry as to the operation of the licencing
25 provisions other than what you read in the Green
26 Book?

27 MRS. PLUMPTRE: As you know the
28 whole question is a very complicated one. I
29 don't in any way pretend to be an expert in the
30



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2 patent field, but from the evidence of the Green
3 Book it seemed to me that there must be surely
4 some difficulty or reasons that there were so
5 few compulsory licences, whether legal difficul-
6 ties, delays, expenses, we don't know, but as we
7 can see only two actually issued and one under
8 consideration at the moment. This seems a very
9 small number to enable competition.

10 MR. HANSARD: So not to hold you
11 too long, I am going over this pretty rapidly.
12 I see another, No. 4, a comment on promotional
13 expenditures "We are greatly concerned for two
14 reasons that the control given to the industry
15 through patents should have resulted in the
16 heavy promotion and advertising expenditures".
17 You say it is control given to the industry
18 through patents that results in the heavy promo-
19 tional and advertising expenditures.

20 MRS. PLUMPTRE: I didn't actually
21 say that, what I am saying we are disturbed
22 that they are so heavy.

23 MR. HANSARD: You are not saying
24 that results in the control given to the industry
25 through patents?

26 MRS. PLUMPTRE: I didn't think we
27 had it that way.

28 MR. HANSARD: I don't know, I
29 would have thought so. "Many of which have been
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1
2 termed wasteful and unprofessional". Who termed
3 them wasteful and unprofessional?

4 MRS. PLUMPTRE: That is in the
5 Green Book, you will find it as a quotation from
6 an article in the Canadian Medical Journal.

7 MR. HANSARD: That is a double
8 jump from the Canadian Medical Journal to the
9 Green Book to you.

10 MRS. PLUMPTRE: That is right.

11 MR. HANSARD: So far as research
12 is concerned, you say something kind about drug
13 manufacturers which you qualify, but you say it
14 is true research is expensive but it is also
15 profitable. I wonder if you could explain to
16 the Commission how is research profitable?

17 MRS. PLUMPTRE: I think you will
18 find reference to that in the Green Book and I
19 think here again it was based chiefly on evi-
20 dence given to the Kefauver Committee that one
21 company could make millions when they discovered
22 one drug. I think you will find that there.

23 MR. HANSARD: You are saying that
24 because a company did some successful research
25 that it was the research that was profitable.

26 MRS. PLUMPTRE: The results of
27 the research were profitable.

28 MR. HANSARD: But you say but
29 research - but it, which obviously refers to
30



1
2 research is profitable.

3 MRS. PLUMPTRE: If you want to be
4 technical and put research expenditure on one
5 side and the returns from selling the drug, and
6 the profits which result from the research is
7 another profit - I suppose technically research
8 asn't profitable, but it makes the profit
9 possible.

10 MR. HANSARD: The point I was
11 getting at, Mrs. Plumptre, all research isn't
12 successful.

13 MRS. PLUMPTRE: No, not at all.
14 I really would like to make it quite clear we
15 are not critical. We are very grateful and as
16 consumers we should be for the excellent
17 research that has been done, but I think perhaps
18 it is not - if you look completely from a busi-
19 ness point of view it is like other manufacturers
20 who are looking for new products, which is a
21 very important item of business.

22 MR. HANSARD: Presumably business
23 people are in business to make a profit.

24 MRS. PLUMPTRE: So they should be.

25 MR. HANSARD: So they should be.
26 Then you will agree with me that all the research
27 that is done whether successful or unsuccessful
28 all costs money?

29 MRS. PLUMPTRE: Oh yes.
30



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2 MR. HANSARD: It is all money that
3 has to be found somewhere before there can be a
4 profit; is that correct?

5 MRS. PLUMPTRE: Well, sometimes,
6 yes, but I suppose the money has come from other
7 research quite often that has been very profitable.

8 MR. HANSARD: The research isn't
9 profitable, it has been successful research which
10 has produced a product that is profitable.

11 MRS. PLUMPTRE: To be absolutely
12 technical.

13 MR. HANSARD: My point is research
14 on the whole is something that these drug manu-
15 facturers have to engage in.

16 MRS. PLUMPTRE: Very definitely,
17 oh yes.

18 MR. HANSARD: It is a costly item.

19 MRS. PLUMPTRE: Yes.

20 MR. HANSARD: Whether it is success-
21 ful or not it costs money.

22 MRS. PLUMPTRE: Naturally.

23 MR. HANSARD: They have to stay in
24 business.

25 MRS. PLUMPTRE: Which they have
26 done very profitably.

27 MR. HANSARD: Are you sure?

28 MRS. PLUMPTRE: From the evidence.

29 MR. HANSARD: Did you get that from
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2
3 the Green Book?

4 MRS. PLUMPTRE: Yes.

5 MR. HANSARD: I see, thank you.

6 MRS. PLUMPTRE: May I just say with
7 regard to this research, now you have raised the
8 question of profits, I understand from the figures
9 given that the manufacturing drug industry is
10 among one of the most profitable industries in
11 Canada. I must say we do find it a little -
12 when we consider - when they make very large
13 profits and in some cases are able to spend up
14 to 40% of net sales on promotion, we think that
15 is something that needs to be looked at.

16 MR. HANSARD: You made some criti-
17 cism - you say it is very profitable and you use
18 qualifying adjectives and so on, they are all
19 relative terms. You are also basing yourself
20 on the Green Book in making this statement.

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Plumptre, cr-ex. 83
(Hansard)

MRS. PLUMPTRE: Yes.

MR. HANSARD: This question of promotion and the medical profession. My understanding of it is that you say that the medical profession protect the consumer as to the nature of the thing they prescribe, but not as to the price?

MRS. PLUMPTRE: I think some doctors are very concerned about this, but one of the things we have had members draw to our attention is that there are a number of people in the low income groups who cannot afford prescriptions.

MR. HANSARD: I understand that, and that is one of the great drawbacks of our times, but the doctors know what they are doing?

MRS. PLUMPTRE: I certainly hope so, but I would like this question directed to the Food and Drugs Directorate, because I understand some drugs are withdrawn from the market because they are not completely satisfied with the use being made of these drugs.

MR. HANSARD: In other words, drugs can be misused?

MRS. PLUMPTRE: Yes.

MR. HANSARD: And one of the difficulties, and I think you will agree with me on this, is that an ordinary practising doctor, just as I try to



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Plumptre, cr-ex. 84
(Hansard)

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2 be a practising lawyer, is up against is the
3 flood of new materials put on the market.

4 MRS. PLUMPTRE: That is why we
5 recommend that there should be concise reports made
6 available.

7 MR. HANSARD: Your recommendation is
8 that somebody else, other than the people who
9 produce the products should be responsible for
10 promoting them?

11 MRS. PLUMPTRE: No, I didn't say that
12 at all. I understand that when a manufacturer puts
13 a new drug on the market, he makes a recommendation
14 to the Directorate, and we feel that the doctors
15 who are carrying heavy loads of patients, and with
16 the flood of new drugs which they must know about,
17 and they haven't the time to read all the literature
18 that comes in to them, and sometimes this literature
19 has not been sufficiently controlled, and we feel
20 that this would be a service to the doctors, to
21 use the manufacturer's report and the Food and
22 Drug Directorate's reports.

23 MR. HANSARD: So you say the
24 promotional literature should be confined to the
25 claims made by the manufacturers and universities,
26 and people like that, and not extravagant claims
27 that are sometimes made?

28 MRS. PLUMPTRE: I would like to
29 see the extravagant claims limited, but to make
30



Plumptre, cr-ex 85
(Hansard)

1
2 sure that doctors get regular reports based on
3 good material from manufacturers and other tests
4 and they should be concise.

5 MR. HANSARD: You would go along
6 on the proposition that when some manufacturer,
7 through research, has been fortunate enough to
8 discover something that has a desirable effect in
9 curing some horrible complaint. he is the one that
10 knows about that?

11 MRS. PLUMPTRE: Oh. yes.

12 MR. HANSARD: And nobody else has
13 thought about this thing, and he maybe even takes
14 out a patent on it.

15 MRS. PLUMPTRE: Sure he does.

16 MR. HANSARD: They all don't. Let
17 us assume that he does. The patent law is the
18 law of the land is it not?

19 MRS. PLUMPTRE: Yes.

20 MR. HANSARD: Somehow or other, if
21 he is going to stay in business, he has got to
22 recoup the expense he had in discovering it, do
23 you agree?

24 MRS. PLUMPTRE: Yes.

25 MR. HANSARD: So he then has to
26 persuade somebody to use the drug?

27 MRS. PLUMPTRE: Yes.

28 MR. HANSARD: And the method that
29 has been evolved up to now, which may not be the
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3 best, has been to promote that drug through
4 literature, gnerally addressed to the medical
5 profession?

6 MRS. PLUMPTRE: Yes.

7 MR. HANSARD: And you can see that
8 that method is a costly method?

9 MRS. PLUMPTRE: I understand it is
10 not the promotional literature, but the samples...

11 MR. HANSARD: I think I can tell you
12 that the literature also goes to the doctors.

13 MRS. PLUMPTRE: My point is I don't
14 think the doctors have the time to read all the
15 promotional literature from all the manufacturers, and
16 don't ou think it would be better for them to
17 have something concise?

18 MR. HANSARD: Which the manufacturers
19 and everybody agreed on?

20 MRS. PLUMPTRE: Precisely.

21 MR. HANSARD: I think that would be
22 ideal if it could be done.

23 MRS. PLUMPTRE: If we are questioning
24 me about the promotion, and you say that is costing
25 very little, I would like to draw your attention to
26 the fact that from the statistics in the green book
27 we know that the kind of money devoted to research
28 in Canada for pharmaceutical products, I thin the
29 proportion is two or three percent, I think the
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2 highest for one company was seven per cent, and
3 the promotional literature runs 25 per cent.

4 MR. HANSARD: But you cannot be
5 sure that there is not some explanation for that
6 in that research is not done in this country but
7 done somewhere else?

8 MRS. PLUMPTRE: And they also get
9 profits from it.

10 MR. HANSARD: But they do the
11 research there, and that cost may not be considered
12 in those percentage figures. Did you consider
13 that?

14 MRS. PLUMPTRE: Oh, yes.

15 MR. HANSARD: But you didn't mention
16 that in this statement?

17 MRS. PLUMPTRE: I mentioned exactly
18 what was in the material supplied.

19 MR. HANSARD: So, if by some happy
20 accident someone is able to show that there is
21 more to the story than what is in the green book,
22 you would go along with the real facts, if and
23 when they come out?

24 MRS. PLUMPTRE: Exactly.

25 MR. HUME: I am F.R. Hume,
26 representing the Canadian Pharmaceutical Manufacturers
27 Association. I saw your brief for the first time
28 just now and I haven't had a chance to study it.
29 Would you be good enough to turn to page 5? The
30



1
2 paragraph commences at the bottom of page 4,
3 dealing with promotional expenditures, and I see
4 the sentence on the second line of page 5:

5 "In the first place there can
6 be no doubt that the high level
7 of these expenditures..."

8 speaking of promotional material,

9 "amounting on the average to
10 25 per cent, and in some cases
11 to more than 40 per cent of the
12 value..."

13 may I ask you if the basis for that is the information
14 in the green book?

15 MRS. PLUMPTRE: Yes.

16 MR. HUME: And that was at page 115
17 at section 189, the green book provides as follows:

18 "The expenditures of certain firms
19 on advertising and promotion, stated
20 as a percentage of net sales, have
21 already been set out. The average
22 for all the firms from which
23 information on this point was
24 obtained was almost precisely
25 25 per cent".

26 Is that the place where you got that information?

27 MRS. PLUMPTRE: Yes, I think the 40
28 per cent comes from page 108, column C.

29 MR. HUME: Yes. Well now, may I draw
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Plumptre, cr-ex 89
(Hume)

your attention to the fact that the green book qualifies the percentage of 25 per cent as being the average for the firms for which information on the point was obtained, and you have parlayed that in your submission, into an average for all Canadian manufacturers, and may I suggest to you, I think you are a fair minded person, that in writing your brief you have far exceeded what was said in the green book, because if you read further in section 189, you will see that only 24 firms were canvassed, because they say that only two with relatively high cost of goods sold are taken out, leaving 22 remaining. Yet you say that the average for all Canadian companies is 25 per cent.

MRS. PLUMPTRE: I was under the impression that the firms that were consulted were firms whose output was the major part of the output in Canada. I understand this material includes all the large firms.

MR. HUME: When you read that section 189 which indicated that there were certain firms from which information of this kind was obtained, and by implication there were certain firms from which information was not obtained, did you make any inquiry to see how representative that figure was?

MRS. PLUMPTRE: I don't see how I could.



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Plumtre, cr-ex 90
(Hume)

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2 As I say, I have no further information on the
3 output of these individual companies. I cannot
4 say what proportion of the industry is represented
5 except what is said here, and if you want to
6 quibble with my figures or question the figures
7 I have used. They limit themselves to the fact
8 that promotional expense is very heavy.
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3 MR. HUME: Now, Mrs. Plumptre,
4 that is a question, of course, of some interest.
5 Are you aware that there is currently an inquiry
6 going on in the Province of Ontario with respect
7 to some of these questions before a Select
8 Committee of the Ontario Legislature and although
9 the evidence is not sworn I think it is reliable
10 nevertheless and that a brief submitted by the
11 Association which I represent to that Select
12 Committee indicates that on page 66 only 6.5%
13 of 33 firms which they canvassed was devoted of
14 their sales dollar. There is an area in there --
15 In other words to get the average you suggest
16 on page 5 you have really got to take the entire
17 industry.

18 MRS. PLUMPTRE: I would agree. I
19 have made it quite clear my claims are based on
20 the Green Book. I know that is why we were
21 very anxious to have public hearings because
22 all these figures will be shown. I understand
23 that your Association will have an opportunity
24 to put these figures on the record and then
25 they are there for the consideration of the
26 Commission, not for me.

27 MR. HUME: May I put it to you
28 that the Green Book qualifies the figures by
29 indicating certain types of firms were canvas-
30 sed whereas your statement is a broad general



1
2 statement.

3 MRS. PLUMPTRE: I accept that.

4 MR. HUME: May I finish please.

5 "That the high level of these expenditures by
6 Canadian manufacturers, amounting on the average
7 to 25%, and in some cases to more than 40% of
8 net sales, are an important factor in raising
9 the prices of drugs".

10 Why did you not qualify in your
11 statement in the same way that the Director has
12 carefully qualified it in his?

13 MRS. PLUMPTRE: I may accept your
14 qualifications. I probably should not have used
15 the word "all". Perhaps I should have said 27
16 companies and given you the actual figures which
17 in there range from 40.7% down to the lowest is
18 10.2.

19 MR. HUME: Thank you, Mrs.
20 Plumptre. I thought you would agree with that
21 because it is only in fairness.

22 THE CHAIRMAN: I think you are
23 getting pretty far with cross-examination of
24 this particular witness. If you want to get
25 your figures in for a correct statement then
26 the way to do it is with your witness rather
27 than doing it by way of cross-examination of a
28 witness who says her entire information is
29 based on the information in the Green Book.
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3 MR. HUME: That is quite right,
4 Mr. Chairman and that is what we subsequently
5 will be putting to this Commission but surely
6 you are not going to suggest that where a witness
7 makes a statement in a public hearing that the
8 average cost of promotional literature for all
9 pharmaceutical manufacturers in Canada is 25%;
10 you are not going to suggest I have no right to
11 cross-examine upon that. That statement does
12 not appear in the Green Book.

13 THE CHAIRMAN: I think that could
14 be done in one sentence.

15 MR. HUME: Perhaps my techniques
16 are not as experienced as they should be. You
17 will have to bear with me.

18 THE CHAIRMAN: What I am getting
19 at here is this is not a trial.

20 MR. HUME: I suppose it is not.
21 It depends on the word "trial". Certainly, Mr.
22 Chairman, there are certain pharmaceutical manu-
23 facturers in Canada on trial in the sense that
24 it is popular today to say drugs cost too much
25 and the purpose of this inquiry is to find the
26 fact as to whether or not that is so.

27 THE CHAIRMAN: We are trying to
28 get the facts. Not just what is said in the
29 Green Book but all the facts that bear on the
30 question.



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2 MR. HUME: Here is a document which
3 makes a broad general statement and that is just
4 one example I picked out where Mrs. Plumptre now
5 agrees it was not in the Green Book and she has
6 used language a little too broad. If it did not
7 appear challenged, it would appear in the press.

8 THE CHAIRMAN: There is no reason
9 why you should not challenge a statement which is
10 not a correct reflection of the Green Book. That
11 is quite all right. I think you should not pursue
12 it further

13 MR. HUME: Well, I have finished.

14 Mrs. Plumptre, I wonder if you
15 would be good enough to turn to the bottom of
16 page 1 and the top of page 2 where you make the
17 point which appears in the Green Book that the
18 buyer of drugs when they are ill does not have
19 an opportunity to shop around for the best
20 prices. Do I interpret that suggestion in that
21 paragraph to indicate that you want some special
22 protection? Are you suggesting there that the
23 doctor, in whom the patient has put himself, and
24 is presumably a skilled man, should not have a
25 free choice of prescribing whatever he thinks is
26 the best thing and price is not really in consi-
27 deration?

28 MRS. PLUMPTRE: We are suggesting
29 nothing of the sort.
30



1
2 MR. HUME: What is the protection
3 that you wish then?

4 MRS. PLUMPTRE: The protection I
5 feel - having read this green material - that
6 the patent system is giving the manufacturers
7 monopolistic control over these drugs. We feel
8 we do have protection as to quality of the drugs.
9 We feel we do not have protection. In a system
10 of free enterprise the consumer gets her protec-
11 tion, his or her protection, from prices. That
12 is our protection. We feel we don't have ade-
13 quate price protection in this field.

14 MR. HUME: So that this protection,
15 to which you refer, is not to interfere with the
16 doctor's right to prescribe for a brand name or
17 any name?

18 MRS. PLUMPTRE: No. We have made
19 it quite clear what we think about brand and
20 generic names further on, I think.

21 MR. HUME: Going now to page 4,
22 and this is my last point, about the second para-
23 graph you say "The opinion seems to be widely
24 held that brand names are the sole criteria for
25 judging the quality of drug products". Who
26 holds that opinion; your Association or the
27 Canadian Association of Consumers? Is that the
28 opinion of your members?

29 MRS. PLUMPTRE: This is an opinion
30



1
2 we have met very widely. People will say you
3 must only buy -- You must have something of a
4 certain manufacturer.

5 I am not sure - I am quite frank -
6 I don't recall - I think there is a reference to
7 this actually in the report. I can't put my
8 finger on it but certainly this is something
9 which is held - I can say definitely - very
10 widely held. It seems to be widely held. This
11 is my opinion this is widely held.

12 MR. HUME: This is true: they have
13 brand names in the food products.

14 MRS. PLUMPTRE: In many cases.

15 MR. HUME: When you go into your
16 general store to buy a can of peas, you don't
17 buy a can. You want to know who makes the peas
18 and something about them.

19 MRS. PLUMPTRE: Yes, if we qualify
20 that. May I qualify that? I don't always buy
21 just because it happens to be made by a brand
22 with which I am familiar in other fields. If I
23 am buying peas I would like to see what the
24 standard is. I like to see whether it is fancy,
25 choice or standard. That is the Government stan-
26 dard. I buy standard if I want that. I would
27 buy choice if I want that.

28 MR. HUME: Perhaps this is a perso-
29 nal question. You do buy cans of peas, I take
30



1
2 it?

3 MRS. PLUMPTRE: Yes.

4 MR. HUME: For your home just like
5 my wife does.

6 MRS. PLUMPTRE: Yes.

7 MR. HUME: Do you buy particular
8 manufacturer's can of peas?

9 MRS. PLUMPTRE: Not always, no.

10 MR. HUME: The one you buy you
11 are satisfied with. You presumably would re-buy
12 the same peas from the same manufacturer?

13 MRS. PLUMPTRE: Not necessarily. I
14 buy as I see. My first qualification in buying
15 peas - I probably agree I would - if I am buying
16 it for one purpose I buy choice. If I am buying
17 it for another purpose I buy fancy.

18 MR. HUME: My final question is:
19 if the doctor elects. for reasons best known to
20 him, to prescribe a drug by its generic name,
21 that is perfectly legal and satisfactory; is it
22 not?

23 MRS. PLUMPTRE: Yes.

24 MR. HUME: And if the doctor elects,
25 for reasons best known to himself, to prescribe a
26 drug by its brand name, that is all quite proper,
27 is it not?

28 MRS. PLUMPTRE: Yes.

29 MR. FRAWLEY: I just have one or
30



1
2 two questions. Mrs. Plumptre, it appears from
3 your evidence this morning that you have relied
4 almost exclusively upon the material contained
5 in the Green Book.

6 MRS. PLUMPTRE: Oh yes.

7 MR. FRAWLEY: I thought before you
8 stood down I would like at least to ask you
9 whether you had made any close examination of
10 the prices charged by the retail pharmacists.

11 MRS. PLUMPTRE: I am not quite
12 sure what you mean by that because after all if
13 I am dealing with ethical drugs and I get a
14 prescription from the doctor and perhaps he
15 says "You take it to your own druggist". In some
16 cases the doctor will say "Take it to a certain
17 druggist". This is why I say we need protection.

18 MR. FRAWLEY: Perhaps I wasn't
19 clear. Your doctor gives you a prescription,
20 Mrs. Plumptre. He gives you a prescription for
21 one of the steroid drugs, have your people made
22 any inquiry to find whether or not if you buy a
23 prescription in 30 tablets of the steroid drug,
24 according to the brand name and so on, whether
25 you would have to pay that same price if you
26 went to every single drugstore in the cities of
27 Edmonton or Calgary or Ottawa?

28
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Plumptre, cr-ex. 99
(Frawley)

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3 MRS. PLUMPTRE: I do not know the
4 answer to that, because usually when you buy
5 these things you buy them and you are told to buy
6 them quickly and you go to one drugstore, and when
7 it has been prescribed I understand it is stamped
8 and there is a code put on to indicate the price
9 that has been charged.

10 MR. FRAWLEY: I agree with you and
11 I realize you want that prescription before
12 nightfall, you are in no position to go canvassing
13 all of the drugstores in Ottawa. But I am just
14 wondering whether in your investigation you have
15 been able to show if you did canvass every single
16 drugstore you would have to pay the same price
17 for these thirty tablets of steroid.

18 MRS. PLUMPTRE: No, my evidence is
19 I would point out that when these things are
20 prescribed they are prescribed for emergencies
21 and you don't go around shopping all of the 125
22 drugstores.

23 MR. FRAWLEY: You say that from
24 a practical standpoint.

25 MRS. PLUMPTRE: Yes.

26 MR. FRAWLEY: The Commission is
27 concerned with restrictive trade and monopoly and
28 so on, and I am just wondering whether, regardless
29 of the very excellent work in the green book,
30 whether from your own inquiries in your eastern or



Plumptre, cr-ex. 100
(Frawley)

1
2 western associations you have looked into this
3 question of whether or not you would have to pay
4 the same price for those thirty tablets wherever
5 you bought them in any drugstore.

6 MRS. PLUMPTRE: The answer is no.

7 MR. FRAWLEY: Thank you.

8 MR. BUCHANAN: I have two general
9 points, Mr. Chairman. One is - and this is
10 following some of your remarks to Mr. Hume - I
11 think it is absolutely right that manufacturers
12 should be given an opportunity following the
13 evidence to speak their mind.

14 THE CHAIRMAN: No, you are not going
15 to speak your mind at the time the witness is
16 being questioned. When the witness is in the box
17 questions may be asked of the witness, but speeches
18 and arguments are not in order at that time.

19 MR. BUCHANAN: I am sorry, I should
20 have said to cross-examine on points which concern
21 us and which are a problem.

22 But the next thing I would like to
23 suggest is that at this meeting Mrs. Plumptre had
24 these briefs passed around, it would have been a
25 very helpful thing if they had been in our hands
26 even a day before, with just a little bit of
27 preliminary preparation on my part and others
28 who are terribly interested in this.

29 THE CHAIRMAN: I think we all recognize
30



Plumptre, cr-ex. 101
(Buchanan)

1
2 that, that if you had time to read it and study
3 it. We only got it yesterday afternoon ourselves;
4 I think it was only completed then.

5 MR. BUCHANAN: Probably in a court
6 of law this evidence wouldn't be allowed to be
7 given.

8 THE CHAIRMAN: That is questionable.

9 MR. HANSARD: I am afraid I can't
10 support my friend on that.

11 THE CHAIRMAN: If there are no
12 further questions, that will conclude the examination.

13 MR. MACLEOD: Before you adjourn, Mr.
14 Chairman, may I point out that one minute with
15 Mr. Deachman would free him.

16 THE CHAIRMAN: Thank you, Mrs. Plumptre.

17 MR. MACLEOD: There was one question
18 my friend asked about this.

19 MR. DEACHMAN: It concerns Tariff 220.
20 There has been a paragraph left off the bottom
21 part of the item which refers to medicinal
22 preparations containing over 40 per cent proof
23 spirit. It is indicated in the statement I made.

24 MR. MACLEOD: Apart from that
25 qualification, do the statements set out the
26 tariff items for the drugs?

27 MR. DEACHMAN: Yes. Except in
28 the statement where you see "GATT", that is
29 General Agreement on Tariffs and trade; those
30



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are the rates which apply, and then on Tariff
Item 220(1) and (11) the rates are $17\frac{1}{2}$ per cent,
they are subject to a discount of 10 per cent
in those two paragraphs.

MR. HUME: The GATT agreements
only apply to those countries which are members
of the Geneva Agreement?

MR. DEACHMAN: No, not necessarily.
There are countries which are not members of
GATT but which are favoured nations and which
get the rate.

THE CHAIRMAN: We will adjourn until
2:30.
Whereupon the Commission adjourned until 2:30 p.m.



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2 ---Upon resuming at 2:30 p.m.

3 MR. MACLEOD: We have Dr. Morrell of
4 the Food and Drug Directorate.

5 THE CHAIRMAN: Dr. Morrell.

6 DR. C.A. MORRELL, sworn

7 MR. MACLEOD: Did you want to make
8 any statement, Dr. Morrell, or would you prefer I
9 question you?

10 DR. MORRELL: I have no statement to
11 make. Perhaps it would be better if you lead me
12 along with your questions.

13 MR. MACLEOD: What is your position,
14 doctor?

15 DR. MORRELL: I am the Director of
16 the Food and Drug Directorate of the Department
17 of National Health and Welfare.

18 MR. MACLEOD: The doctor in your
19 name, what is that?

20 DR. MORRELL: It is a PhD. in
21 medical sciences, specializing in bio-chemistry.

22 MR. MACLEOD: How long have you been
23 Director of the Food and Drug Directorate?

24 DR. MORRELL: Fifteen years.

25 MR. MACLEOD: Were you previously
26 employed within the same branch of the department?

27 DR. MORRELL: Yes, I was. I have
28 been in the department for 31 years in all. The
29 first 16 years I was in the laboratory and the
30



Morrell, dir 104
(MacLeod)

1
2 last fifteen years as Director.

3 MR. MACLEOD: Could you tell us
4 something about the organization of the Food and
5 Drug Directorate?
6

7 DR. MORRELL: Yes, the Food and Drug
8 Directorate has central headquarters, staff in
9 Ottawa, which consists of a laboratory division,
10 an enforcement administrative division and a
11 business office, business management office. The
12 laboratory is divided up into sections depending
13 on the kind of work they do. The work in Ottawa
14 is pretty well confined to investigative work or
15 research work to development and standards of
16 foods, drugs, chemicals or medical devices.

17 The outside staff is divided into
18 five regions, each region having a central laboratory
19 and central inspection service and administrative
20 staff. There are laboratories in Halifax,
21 Montreal, Toronto, Winnipeg and Vancouver.

22 In addition to these five regional
23 offices there are 21 district offices. The
24 country is divided into five regions. The
25 western region includes British Columbia and
26 Alberta. The west central region includes
27 Saskatchewan and Manitoba. The central region
28 includes the greater part of Ontario and the
29 east central region all of Quebec and a small
30 portion of the eastern part of Ontario. The



Morrell, dir 105
(MacLeod)

1
2 eastern region is the Maritime provinces,
3 Newfoundland and Prince Edward Island. Work
4 of analysing drugs and investigating drugs -
5 I will confine my remarks to drugs this
6 afternoon.

7 MR. MACLEOD: Yes.

8 DR. MORRELL: Is carried out mainly
9 in the regional offices, the district offices
10 and the regional laboratories. They do the
11 analyses and examination for enforcement work to
12 determine whether the products are up to standard,
13 whether they are properly labelled and if anything
14 else is not in accordance with the regulations or
15 the Act itself.

16 The central laboratory does a good
17 deal of work on labelling too and advertising.
18 It confines itself in the advertising field
19 generally to advertising of a national nature.

20 The regional laboratory and offices
21 in scrutinizing advertising are interested mostly
22 in the local advertising.

23 The policy - administration policy,
24 ardenforcement policy is all laid down in Ottawa.
25 There are about 330 positions in the whole of the
26 country in the Food and Drug Directorate. About
27 half of these are in Ottawa and half in the
28 regional organization. Of this staff about half
29 is scientifically qualified in one science or
30



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Morrell, dir 106
(MacLeod)

another. We also have some medical people on the staff. The others are technicians or clerks or administrators.

MR. MACLEOD: Now, what laws or statutes does the Directorate work under?

DR. MORRELL: We have two laws, the Food and Drug Act and the Proprietary or Patent Medicine Act.

MR. MACLEOD: Perhaps we could take the Proprietary or Patent Medicine Act first and get it out of the way. Do you have a separate division that deals with the administration of that act?

DR. MORRELL: Yes, for years we have had a separate division, but in the last year it has been combined into the Inspection and Enforcement Services at headquarters, so it is all now enforced by that division in Ottawa.

MR. MACLEOD: The term "patent medicine" has no relation to the other type of patent as we know it today, does it?

DR. MORRELL: Well, going way back, I think the first Proprietary or Patent Medicine Act was passed in 1909. I think up until that time you could get a patent, you could get a patent on a formula. About that time - I don't know, the exact time relationships - this was no longer, it was abolished, the patenting of formula or



Morrell, dir
(MacLeod)

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2 medicine was abolished and the Proprietary or Patent
3 Medicine Act replaced it. I think there is a
4 transferral of the idea from the original patenting
5 of the formula to the name of the present Act, but
6 the present patent medicine is not, of course,
7 patented in that sense.

8 MR. MACLEOD: That is the point I
9 wanted to get.

10 DR. MORRELL: It is not patented, no.

11 MR. MACLEOD: Just what is the
12 procedure if someone wants to put out a patent
13 medicine?

14 DR. MORRELL: He must submit to the
15 Food and Drug Directorate or the Department a
16 complete formula, quantitative and qualitative
17 formula for his proposed medicine. This is
18 examined in the Department by technical people
19 including pharmacists and medical people and the
20 claims which the men submit it is going to make
21 are examined in terms of the composition of the
22 product. That will be the first thing.

23 There are certain things that can't
24 be registered. We call them registered medicine
25 now. They can't be registered - a narcotic drug
26 cannot be included in a proprietary or patent
27 medicine. A relatively new drug cannot be
28 included in a proprietary or patent medicine.
29 No drug that is on prescription in the Food and
30



Morrell, dir. 108
(MacLeod)

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2 Drug Act can be included in a proprietary or
3 patent medicine. The amount of alcohol in a
4 proprietary or patent medicine is examined rather
5 carefully. In the old days this was one way of
6 getting alcoholic beverages. Now the alcohol
7 must be of such a quantity that it won't lend
8 itself to beverage purposes or it must be so
9 medicated it won't be acceptable or potable
10 as a beverage.

11 Having examined the proposal
12 from all of these angles a Committee may be
13 consulted. There is an advisory board, Proprietary or
14 Patent
15 Medicine Advisory Board to the Food and Drug
16 Directorate. The membership of the Board consists
17 of two physicians and two pharmacists, and they
18 may be consulted as to whether the medicine should
19 be registered and whether it is - its claims
20 are justified.
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Morrell, dir 109
(MacLeod)

DR. MORRELL: A good many of them, of course, are rather routine and resemble one another in some way or other, and therefore present no problem to the person who is responsible for recommending that they be registered.

Once they have been accepted, the manufacturer is sent a form and he applies for a license. He is licensed, and the medicine itself, the particular medicine, is registered and given a registration number, so that you have the two pieces of paper, the license to the manufacturer and the registration number of the medicine.

The licensee may have a number of numbers, one for each of his medicines, and he may not change the formula unless he notifies the Food and Drug Directorate, and if we agree to the change in the formula he gets a new number, so that the number always refers to the product, and we don't change it when the product's composition is changed.

There are certain requirements about labelling and about claims, and these claims in advertising for that product are examined in the newspaper and radio and T.V., from the standpoint of deception and fraud. The registration number is one of the important things



Morrell, dir 110
(MacLeod)

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2 to appear on the label.

3 THE CHAIRMAN: One question that
4 arises, Dr. Morrell, did I understand correctly
5 that included among drugs that couldn't be
6 registered are relatively new drugs?

7 DR. MORRELL: Yes.

8 THE CHAIRMAN: What does that mean?

9 DR. MORRELL: We have a requirement
10 in the Food and Drug Act that all new drugs, which
11 includes substances with new or modified chemical
12 structure, and it also includes drugs that may
13 be known in medicine but have been used for some
14 different purpose. If a new use for that medicine
15 is advocated, it becomes a new drug. There are
16 a number of compounds, for example, that might be
17 considered new drugs because of the very fact that
18 they are now given together. If a drug has been
19 given orally, and is going to be given intra
20 muscularly, it is going to be a new drug. Anything
21 that is a new drug in that sense is certainly
22 not permitted registration. The drugs that are
23 registered under this Act are intended to be
24 household remedies to be used on the basis of
25 self diagnosis and self treatment, and therefore
26 our greatest concern is of course safety under
27 these circumstances, so a new drug that is not
28 well established or well known is certainly not
29 to be registered.
30



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Morrell, dir. 111
(MacLeod)

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2 THE CHAIRMAN: I understand then
3 that when a new drug has become well established
4 and reasonably well known, it may then be... ?

5 DR. MORRELL: It might then become
6 a registered medicine, or part of a registered
7 medicine. Registered medicines are always more
8 than one substance, compounds.

9 MR. MACLEOD: For what period is
10 a license issued?

11 DR. MORRELL: One year.

12 MR. MACLEOD: It must be renewed
13 after one year?

14 DR. MORRELL: Yes, and the registration
15 is renewed also.

16 MR. MACLEOD: Does that afford you a
17 measure of control over the manufacturers of patent
18 medicines?

19 DR. MORRELL: A very useful measure
20 of control.

21 MR. MACLEOD: And the advertising of
22 patent medicines to the general public is controlled
23 by the Directorate?

24 DR. MORRELL: Yes it is. For example,
25 the Broadcasting Act has a regulation which requires
26 that all commercials for drugs and foods be submitted
27 to the Department of National Health and Welfare
28 for approval before they may be used on the air,
29 and this of course will include patent medicines,
30



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Morrell, dir 112
(MacLeod)

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3 as well as other drug products. They are
4 examined in the Directorate. Perhaps 30,000
5 of these are examined each year, in English and
6 French. Perhaps half of them maybe, half of them
7 are drugs, so that we have an opportunity there
8 to get a look at the, and to criticize the
9 advertisement before it is used.

10 In terms of written or printed
11 advertising, we don't have that opportunity, and
12 we must catch up with them. We subscribe to the
13 newspapers and magazines, and look for advertising
14 of pharmaceuticals or foods in those periodicals
15 or journals.

16 MR. MACLEOD: What is the situation
17 when you run across an advertisement which you
18 feel is objectionable. Are you able to get the
19 manufacturer simply to stop running the ad, or
20 must you show there is some false claim?

21 DR. MORRELL: We have a book as a
22 guide to manufacturers, to indicate the type of
23 thing we will take objection to, so that they
24 will know something about our attitude in advance,
25 but still, looking at a newspaper or a periodical
26 advertisement, we may find something objectionable,
27 particularly perhaps one we consider is violation
28 of Section 3 of the Food and Drug Act, which is
29 a prohibition against the advertising of any
30 food, drug, or cosmetics to the general public as



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Morrell, dir 113
(MacLeod)

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3 a treatment, preventative, or a cure for any of
4 the diseases or normal physical states named in
5 a schedule to the Food and Drug Act, and these
6 include rather serious conditions, or conditions
7 which it is not advisable to encourage self-
8 medication. They should have a doctor's diagnosis
9 and supervision for treatment. Sometimes we
10 come across advertising that infringes on this
11 section, or it might infringe on something which
12 we consider false, misleading, or deceptive, or
13 likely to create an erroneous impression with
14 regard to the drug. We usually don't prosecute
15 immediately. We notify the advertiser that we
16 consider the advertisement to be in violation, and
17 in what way, and this gives him an opportunity to
18 explain his viewpoint, but we ask him not to
19 repeat the advertisement, at least until we have
20 discussed the matter. The majority of them we
21 have no difficulty with at all. They will do so,
22 and I think in only one instance have we had a
23 major court case on advertising. So that while
24 we are always running behind trying to catch up,
25 the situation isn't quite as bad as it may sound.

26 MR. MACLEOD: Can you give me any
27 indication of the number of medicines that might
28 be registered under the Act at this time?

29 DR. MORRELL: Under the Proprietary
30 Patent Medicine Act there is somewhere over 3,000,



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Morrell, dir 114
(MacLeod)

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perhaps 3,200.

MR. MACLEOD: Are you in a position to express an opinion as to whether the number has been increasing or decreasing over the years?

DR. MORRELL: It has been increasing recently.

MR. MACLEOD: And prior to that?

DR. MORRELL: I am only guessing, but I think it might have increased 200 or 300 over the past two years, but we consider that a significant increase. Prior to that it ran about 2800, or 3,000. Now it maybe 3,200.

MR. MACLEOD: Turning now to the Food and Drug Act itself. There are certain drugs in respect of which it is required that a sample of every batch be sent into the Directorate, is that correct?

DR. MORRELL: Yes, I think that is schedule E. Those drugs now are becoming less used. Originally that section was used quite a lot, because it included the organic arsenicals that were used in the treatment of syphilis for example, but the anti-biotics have replaced these drugs, although there are a few of them still available, but that is the group of drugs I think that are on schedule E. Yes.

MR. MACLEOD: Are there other drugs in respect of which the manufacturer must



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Morrell, dir 115
(MacLeod)

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2 have a license?

3 DR. MORRELL: Yes, the biologics
4 drugs, drugs that are listed in schedule C and
5 D to the Food and Drugs Act. Schedule C includes
6 such things as liver extract, insulin, anti-
7 pituitary extract, radio active isotopes.
8 Schedule D includes living vaccines, drugs
9 prepared from micro-organisms or viruses for
10 parenteral use, and anti-biotics for parenteral
11 use. Those are all licensed.

12 MR. MACLEOD: Although a sample
13 is required of each batch, is the manufacturer
14 required to be licensed?

15 DR. MORRELL: No.

16 MR. MACLEOD: Are any other licenses
17 required for the manufacture of drugs than those
18 issued in respect of the drugs you have just told
19 me?

20 DR. MORRELL: No.

21 MR. MACLEOD: So that, apart from the
22 restrictions on the two classes of drugs we have
23 just discussed, anyone may start manufacturing
24 a drug in Canada?

25 DR. MORRELL: Yes.

26 MR. MACLEOD: And then it becomes
27 a question of inspection and enforcement?

28 DR. MORRELL: That is true.

29 MR. MACLEOD: In your inspection
30



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Morrell, dir 116
(MacLeod)

service, do you concentrate on any particular level of the industry?

DR. MORRELL: We have authority to inspect at all levels, right down to the retail, but we do feel that it is more profitable, with the limited number of staff that we have, to pay attention mostly to the manufacturer, because we feel that if it is right when it starts, it has a fair chance of being right when it is used, having regard to shelf life etc.

MR. MACLEOD: You say manufacturer. Is that manufacturer of the prepared dosage form?

DR. MORRELL: Yes, that is the manufacturer of a prepared dosage form that I am thinking of.

MR. MACLEOD: Would you inspect, for instance, Fine Chemicals?

DR. MORRELL: Yes.

MR. MACLEOD: To the same degree that you would a manufacturing plant that was sending out dosage quantities?

DR. MORRELL: Yes.

MR. MACLEOD: So you inspect both?

DR. MORRELL: That is true.

MR. MACLEOD: In general, how is the work of inspection carried out?

DR. MORRELL: We have inspectors, as I have said, in the districts and regional



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Morrell, dir 117
(MacLeod)

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2 offices. The majority of drug manufacturing is
3 carried out in two of our regions, that is the
4 east central, the Montreal area, and the central
5 region is the Toronto area. There are others
6 in Ontario and other parts of Canada. In those
7 two regions, we have at present I think two
8 specialists in drug plant inspection. They have
9 spent some years on it. The inspectors are
10 specialists qualified in one or other branch
11 of science. They have been given some training,
12 are being given more training at the present
13 time, but they have also had some experience. They
14 are people who carry out the inspections of the
15 manufacturing and processing plants.

16
17 MR. MACLEOD: Do you carry out any
18 inspections in countries outside of Canada?

19 DR. MORRELL: We do where it is
20 licensed of course. If a company is licensed to
21 manufacture a biological product in Canada he must
22 be inspected at least once a year, and this is
23 done too Where there is no license provided
24 you have no real authority to inspect a plant,
25 in Italy for example, but by courtesy, and
26 for other purposes they maybe willing to receive
27 your inspector, and we have sent an inspector
28 to Italy to look at various pharmaceutical
29 manufacturers.

30 MR. MACLEOD: And in other countries



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Morrell, dir 118
(MacLeod)

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2 in Europe?

3 DR. MORRELL: Italy, Denmark, France,
4 the United Kingdom, and one short trip to Hungary.

5 MR. MACLEOD: I think perhaps you
6 made this clear, but if the manufacturer of a certain
7 product requires it to be licensed then I assume
8 that he must be licensed whether he is in Europe
9 or wherever he is?

10 DR. MORRELL: That is right, he may
11 not sell a certain class of products here unless
12 he is licensed.

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Morrell 119
dir (MacLeod)

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3 MR. MACLEOD: Now, you were telling
4 the Chairman something about new drugs a moment
5 ago. What, briefly, is the procedure before a
6 new drug is accepted?

7 DR. MORRELL: Well, you want
8 details, sir? There is a regulation or several
9 regulations here now which must be complied with
10 before a manufacturer may put a new drug on the
11 market through the regular commercial channels.
12 Section 301, 302 - well, they haven't given me
13 a latest copy. But the manufacturer must submit
14 to the Minister of National Health and Welfare
15 all the information that he has to substantiate
16 the safety of the product, and this includes, of
17 course, a description of the product itself by
18 name, composition, description of his manufac-
19 turing methods, what controls that he exercises
20 during the manufacturing. He must give us the
21 information he has about the pharmacology of
22 the drug and he must give us detailed accounts
23 of his clinical controls of the drug.

24 Now, provision is made in the
25 regulations for the manufacturer to sell his
26 product for clinical investigation if it is
27 properly labelled, so he has an opportunity to
28 collect this information in Canada, and we try
29 to encourage manufacturers to get some of this
30 information in Canada. A great many of our new



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2 drugs do not originate here, they come from
3 abroad, and we do accept clinical data from
4 some countries, particularly if we are satis-
5 fied with the looks of it. But we try to encou-
6 rage them to get some information in this country.

7 In addition to the composition
8 which controls the pharmaceutical forms that he
9 is going to put it out in, the clinical and
10 pharmacological information about it, we must
11 know what kind of a label he is going to put on
12 it and what claims he is going to make for it,
13 and we examine this material. Sometimes it is
14 rather bulky and lengthy and we have provided
15 now for a period of 90 days so that we can make
16 a decision on the basis of the evidence in that
17 time. Then we tell him whether the information
18 he has submitted is adequate or inadequate, and
19 if it is inadequate we tell him in what way it
20 is inadequate. But when it is adequate there
21 is a form letter sent out to him telling him
22 that he may sell this drug in Canada in the
23 usual way, provided, of course, all other regu-
24 lations of the Food and Drug Act regulations
25 are complied with.

26 MR. MACLEOD: Does every new
27 drug have to be cleared for sale in Canada
28 regardless of the fact that it may have been
29 accepted in other countries?
30



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Morrell 121
dir (Macleod)

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2 DR. MORRELL: Yes.

3 MR. MACLEOD: Now, you told us
4 something of the nature of the testing that you
5 carry out in Canada. Can you say something about
6 the extent of the testing which you carry out?
7 That is, do you visit the plant once a year, test
8 every batch of drugs?

9 DR. MORRELL: Are you referring to
10 the clinical testing I referred to, or what?

11 MR. MACLEOD: I am sorry, I thought
12 we had an explanation of that and I was going
13 back to your general testing.

14 DR. MORRELL: To the laboratory
15 examination of pharmaceuticals and to the inspec-
16 tion of pharmaceuticals?

17 MR. MACLEOD: Yes.

18 DR. MORRELL: Well, we examine -
19 for example, I think a year or so ago there were
20 300 or 400 inspections of pharmaceutical manufac-
21 turing plants made. Now, some plants are inspec-
22 ted much more frequently than others. If on
23 going through a pharmaceutical plant we become
24 satisfied and convinced that he has a good manu-
25 facture and analytical control, we feel there is
26 no use going back there the next month or within
27 six months. But there are some manufacturers
28 whose facilities and personnel and perhaps atti-
29 tude towards controls are not in our opinion all
30



1
2 that they should be, so we do spend quite a bit
3 of time in those plants and we may make three
4 or four visits in a year to a plant of that sort.
5 In that kind of a plant the inspector will
6 surely take some samples from the production
7 line for examination by the laboratory, and
8 these he brings back. If it is a particular
9 kind of test it will go to Ottawa, but generally
10 they go to the laboratory for the region in
11 which it is located, and they examine it for
12 the active ingredients, for the availability,
13 disintegration time of the pharmaceutical form,
14 if it is a tablet, and they also look at the
15 labelling. I don't know how many we did in the
16 year 1960-61, but I think we had something under
17 3,000 samples the previous year, 2,700, 2,800.
18 That is in the laboratory.

19 MR. MACLEOD: What sanctions do
20 you apply or are you empowered to apply if the
21 plant does not maintain a good standard?

22 DR. MORRELL: Well, we can prose-
23 cute, that is one; we can seize the product. We
24 find that seizure is more effective than prosecu-
25 tion, and we have made quite extensive use of
26 seizure. The penalties that we might get in a
27 court would be perhaps not very adequate to
28 convince him that he should mend his ways, but
29 the seizure of his product is much more effective,
30



Morrell 123
dir (Macleod)

1
2 I think.

3 Now, having seized his product, we
4 can do one of two things with it: we can either
5 have it destroyed or we can return it to him for
6 reprocessing to bring it line with the regulations,
7 and it will depend on what we have found by analy-
8 sis as to which of these procedures we take.

9 MR. MACLEOD: I presume that in
10 certain cases it wouldn't be practical to repro-
11 cess.

12 DR. MORRELL: In some cases it
13 cannot be reprocessed and there is nothing you
14 can do with it except have it destroyed.

15 MR. MACLEOD: Do you find many
16 drug manufacturers in Canada whose premises in
17 your opinion are below what they should be?

18 DR. MORRELL: We find quite a number
19 below the ideal. The number that are below what
20 they absolutely should be is much smaller. This
21 at the moment we have no authority to interfere
22 with, but if we do find their products out of
23 line we can take action against the product.

24 THE CHAIRMAN: Dr. Morrell, I
25 might ask a little bit further on that point.
26 You said you found a good many that are below
27 the ideal.

28 DR. MORRELL: Yes.

29 THE CHAIRMAN: Do you find many
30



1
2 that are ideal?

3 DR. MORRELL: Well, I don't know;
4 maybe 5% or something close to it. They are
5 very good.

6 THE CHAIRMAN: A very small percen-
7 tage.

8 DR. MORRELL: Yes.

9 THE CHAIRMAN: Would those be
10 chiefly large drug companies?

11 DR. MORRELL: Mostly, I think, yes.

12 THE CHAIRMAN: I want to ask you
13 also, do your inspections enable you to give any
14 considered judgment as to the control that is
15 exercised, of quality, and so on, in the larger
16 plants as compared with the smaller ones in
17 this country, and also if you can tell me any-
18 thing about that situation in other countries
19 such as Italy, Britain and France. Does your
20 inspection service enable you to reach a consi-
21 dered judgment?

22 DR. MORRELL: Well, I might make
23 some remarks about it, sir, that might be of
24 some value.

25 The control that is exercised by
26 a pharmaceutical manufacturer will depend on
27 the number of products that he is manufacturing
28 and on the potency or the danger inherent in
29 his products. One could imagine - and there
30



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Morrell 125
dir (Masleod)

1
2 are such manufacturers who are making such a few
3 products of rather a simple and not particularly
4 dangerous composition who would not require the
5 same control procedures and personnel as a large
6 manufacturer with several hundred products
7 coming out. There is a chance there, of course,
8 for confusion unless everything is laid down and
9 adhered to rather strictly in the procedure. So
10 when you are looking at a plant you must consider
11 what he is doing as well as how he is doing it.

12 Well, one could imagine a person
13 making an aspirin or acetylsalicylic acid tablet and
14 doing nothing else. That man would not require
15 the controls that a man preparing Salk vaccine
16 would and one rather simple control would be
17 satisfactory and perhaps a complex control might
18 not be necessary as in the latter case, the
19 Salk vaccine case; you have to be very critical
20 in that case. When you talk about plant inspec-
21 tion, it is a variable thing.

22 Now, some of the smaller companies,
23 not putting out so many products, can do a
24 reasonable job perhaps with less staff and less
25 equipment than one who was putting out quite a
26 variety and number of products. Now, all this
27 has to be judged.

28 The ones that I referred to as
29 being not in our opinion, frankly, satisfactory
30



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Morrrell 126
dir (Macleod)

1
2 from a control standpoint are perhaps in the
3 smaller group, fewer products.

4 As far as Italy is concerned, we
5 saw - I wasn't there but the inspectors saw some
6 very excellent plants and equipment and the
7 personnel seemed to be very well qualified. But,
8 on the other hand, I think he said that he had
9 heard that there were over a thousand manufac-
10 turers there, and he only saw a few, and he is
11 accustomed to this country and the United States
12 and Britain and France, and some were not in his
13 opinion as good, he would be rather uneasy about
14 products coming from them.

15 I don't have a great deal of data
16 or a mass of information on European plants
17 other than those that are under licence; those
18 we know. I do know, of course, some of the larger,
19 better-known French manufacturers. I have
20 happened to be invited to visit them, and I have
21 seen them. I wouldn't say it was an inspection
22 in the sense of the word; it was a tour through
23 the plant. I could see that things were tidy
24 and clean and run in an orderly fashion, equip-
25 ment, and the people seemed to know what they
26 were doing. But drug plant inspection requires
27 a good deal of experience and a good deal of
28 knowledge, and it would be preferable certainly
29 to have a man with a background of drug
30



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Morrell 127
dir (Macleod)

1
2 manufacturing.

3 I don't know if I have succeeded
4 in making it more confusing or not.

5 THE CHAIRMAN: No, I don't think so.
6 It was confusing to begin with, but it is more
7 clear now.

8 MR. MACLEOD: So is the effect
9 of your evidence, Doctor, that when you find a
10 plant is not up to the standard in which you
11 think it should be, you keep on its tail, so to
12 speak, and keep seizing its products?

13 DR. MORRELL: That is the policy,
14 yes.

15 MR. MACLEOD: Now, what about the
16 inspection of the imports?

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18
19 -

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22 -

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25 -

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28 -

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Morrell 128
dir (MacLeod)

1
2
3 DR. MORRELL: Well, of course,
4 that is done again by our inspectors and not
5 always the same inspectors to which I have been
6 referring as being plant inspectors.

7 We have a man who goes to the
8 Customs in Montreal and one who goes in Toronto
9 and also in Windsor and they look over the mani-
10 fests and pick out products that are either
11 known to them to be drugs or that are consigned
12 to manufacturers known to them to be pharmaceu-
13 tical manufacturers and they have instructions
14 as to what to do.

15 We must limit our sampling to
16 accommodate our laboratory staff. You cannot
17 flood them with samples, which we could very
18 easily do at the present time; so that we have
19 chosen some products and some companies to watch
20 more carefully.

21 This is done by the inspector who
22 goes to the Customs. Now, in ports where there
23 are no inspectors we have an arrangement with a
24 Customs Inspector to notify us of shipments of
25 drugs coming into the country. He holds them
26 until one of our inspectors goes to see them or
27 until he has a release from the Food and Drug
28 Regional Laboratory or office

29 MR. MACLEOD: Is it a fact then
30 that your Directorate is notified of every

dpw



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Morrell 129
dir (Macleod)

1
2 importation of drugs into this country?

3 DR. MORRELL: No, I would not say
4 it was a fact. A good many of them, but certainly
5 not all of them.

6 MR. MACLEOD: What type of shipment
7 might escape your attention?

8 DR. MORRELL: Well, our man goes
9 to the Customs and it might be listed as a chemi-
10 cal, under a variety of names, and he may not
11 consider that it is a pharmaceutical or basic
12 pharmaceutical. He may miss it.

13 Certainly the Customs Inspectors
14 are not familiar with all of the names of pharma-
15 ceuticals and I am sure they miss - I am sure
16 that we don't get all import samples.

17 MR. MACLEOD: Just to clarify that,
18 are the arrangements such that they are intended
19 to bring to your attention all such importations?

20 DR. MORRELL: Yes. I think so but
21 they are not effective.

22 MR. MACLEOD: For the reasons you
23 have just mentioned, amongst others?

24 DR. MORRELL: Yes, amongst others.

25 MR. MACLEOD: Of the ones you do
26 learn about, you make a selection?

27 DR. MORRELL: Yes.

28 MR. MACLEOD: And actually take
29 samples from those and have them analyzed and
30



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Morrell 130
dir (MacLeod)

1
2 so forth?

3 DR. MORRELL: Yes.

4 MR. MACLEOD: What do you do with
5 a shipment if it does not meet the requirements
6 of the law?

7 DR. MORRELL: That is rather simple
8 At Customs we can refuse entry and it may then
9 be shipped back to the country or to the exporter.
10 That is easier to handle than when it is on the
11 domestic market because then it is in the country
12 and is the property of somebody in Canada and we
13 have to seize them, not just refuse entry, but
14 seize the product and take action on the basis
15 of the seizure or prosecute, if we should feel
16 that were necessary.

17 THE CHAIRMAN: Do you find it neces-
18 sary to refuse entry on frequent occasions?

19 DR. MORRELL: No.

20 THE CHAIRMAN: Would you say about
21 how many times a year it may happen; or does it
22 happen as often as once a year?

23 DR. MORRELL: Yes. I think it
24 would happen more often than once a year. I
25 couldn't say how often.

26 MR. MACLEOD: Do you have any
27 occasion to seize goods that have been imported
28 into Canada that were not checked at the Port
29 of Entry?
30



Morrell 131
dir (Macleod)

1
2 DR. MORRELL: Yes. I think I can
3 say that because we know that the manufacturer
4 himself has not produced them and that he has
5 imported them and we get them in the final pharma-
6 ceutical form after he has processed them into
7 a tablet or capsule and we have done quite a
8 number of seizures at that level and these are
9 imported drugs.

10 MR. MACLEOD: If I may turn to
11 another subject, Doctor. Schedule F of the Act
12 lists drugs that may only be sold by prescrip-
13 tion. Is that correct?

14 DR. MORRELL: Yes, that is correct.

15 MR. MACLEOD: Are recommendations
16 for changes of that Schedule made by you?

17 DR. MORRELL: Yes. I am the Chair-
18 man of the Committee, a small committee, consis-
19 ting of one representative of the Canadian Medical
20 Association and one representative of the Canadian
21 Pharmaceutical Association, who make recommenda-
22 tions to the Minister as to which drug should be
23 on prescription sale only.

24 MR. MACLEOD: What considerations
25 enter into a decision to put a drug on the pres-
26 cription list?

27 DR. MORRELL: Well, the main consi-
28 deration is it has been abused or is likely to be
29 abused or misused. It is not necessarily the
30



1
2 toxicities per se. All drugs have dangers in
3 that respect. Barbiturates are on because of
4 misuse and abuse; tranquilizers are on for that
5 purpose. Even the antibiotics are on because
6 they could be misused and abused and have been.
7 Some drugs are on because of toxicities per se
8 but most of them are not.

9
10 Another reason for putting a drug
11 on the prescription is that it is likely to be
12 used - it might be used in the sense it is used
13 for treatment of the disease for which it was
14 intended by the public but it might achieve
15 undesirable side reactions if it were used
16 constantly and over a long period of time; and
17 since there is no doctor to recognize the symp-
18 toms or that the drug is having an undesirable
19 effect the patient or the person who is taking
20 it then gets himself into probably serious
21 trouble; so we have to put drugs on for that
22 reason alone.

23 MR. MACLEOD: What would be some
24 of the factors that influenced you in the case
25 of adding a large number of tranquilizers, I
26 think, in July 1959?

27 DR. MORRELL: Yes. Well, we did
28 put a few on, as you may know, before 1959.

29 Adonidin was one because it had
30 been used improperly and about, I think it was,



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Morrell 133
dir (Macleod)

1
2 1958 the Canadian Medical Association Committee
3 on Pharmacy made a recommendation to the Depart-
4 ment that all so-called tranquilizers be put on
5 prescription and all hypnotics and sedatives and
6 after a considerable period of discussion and
7 talk we made this recommendation to the Minister
8 and it was done; so one could say they were all
9 put on on the recommendation of the Canadian
10 Medical Association.

11 MR. MACLEOD: Turning to still
12 another phase; advertising in respect to so-called
13 ethical drugs - now, here it is a question of
14 prohibiting advertising rather than supervising,
15 is it not?

16 DR. MORRELL: If a drug is on
17 prescription it may not be advertised to the
18 general public. There is a table in here if a
19 drug has a dosage exceeding a certain level
20 given here, it may not be advertised to the
21 general public.

22 MR. MACLEOD: I think there is an
23 indirect restriction to which you referred a
24 few moments ago in that a drug may not be adver-
25 tised as a cure for a specific disease.

26 DR. MORRELL: Yes, the treatment,
27 preventive or cure for a certain list of named
28 diseases.

29 MR. MACLEOD: So the result is, I
30



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Morreil 134
dir (Macleod)

1
2 presume, that a great many of the more potent
3 drugs may not be advertised to the general public?

4 DR. MORRELL: A good many of them.

5 MR. MACLEOD: Do you exercise any
6 supervision over the advertising of these drugs
7 to doctors and professional people?

8 DR. MORRELL: Up to the moment,
9 none, I would say.

10 Recently we have required certain
11 information to be put into package circulars
12 emphasizing the dangers of use of a particular
13 drug; but beyond that we have not yet interfered
14 in any way with advertising to the medical profes-
15 sion or to the pharmaceutical profession.

16 MR. MACLEOD: That is advertising
17 appearing in the Canadian Pharmaceutical Journal
18 or Drug Merchandiser --

19 DR. MORRELL: Yes.

20 MR. MACLEOD: -- or the Canadian
21 Medical Association.

22 DR. MORRELL: Yes, or direct mail
23 advertising.

24 MR. MACLEOD: Can you express any
25 opinion on the perennial argument of the value
26 of brand names as against the generic name drugs?
27 Is there any particular magic in brand names?

28 DR. MORRELL: No. I was saying
29 to somebody just outside, anybody can register
30



1
2 a brand name. It wouldn't matter at all who he
3 is, whether he knows anything or not. All he
4 has to do is get the registration for it, is
5 that not true?

6 MR. MACLEOD: So, Doctor, you
7 would assume there might be good drugs sold
8 under brand names and poor drugs?

9 DR. MORRELL: I am sure there are.

10 MR. MACLEOD: And the same may
11 equally be true of generic drugs?

12 DR. MORRELL: I am sure they are.

13 MR. MACLEOD: It is not a signifi-
14 cant division.

15 DR. MORRELL: No. In my opinion
16 the significant thing is the facilities, ability
17 and attitude of the manufacturer that is impor-
18 tant, not the brand name.

19 MR. MACLEOD: Have you presently
20 some rather extensive revisions to the Food and
21 Drug Act or to the Regulations under considera-
22 tion?

23 DR. MORRELL: Yes, there certainly
24 are. The Minister hasn't seen them. They are
25 under consideration. That is all I can say.

26 MR. MACLEOD: What are they designed
27 to do?

28 DR. MORRELL: Well, they are
29 designed to exercise much greater control over
30



1
2 the manufacturing of pharmaceuticals for sale in
3 Canada

4 MR. MACLEOD: Through your inspec-
5 tion services and because you have some knowledge
6 of imports into this country, are you able to
7 give any estimate of the proportion of drugs
8 which are imported in finished dosage form and
9 those which are imported in bulk or semi-manufac-
10 tured form?

11 DR. MORRELL: I am sorry. I don't
12 think I have any knowledge of that, any figures.

13 MR. MACLEOD: You cannot express
14 an opinion?

15 DR. MORRELL: No, I couldn't.

16 MR. MACLEOD: I think those are
17 all the questions I have, Mr. Chairman.

18 THE CHAIRMAN: There are two or
19 three questions occur to me. I do not know
20 whether it is fair to ask them of Dr. Morrell
21 at this time or not.

22 There was a recommendation in a
23 brief this morning, Dr. Morrell, that the staff
24 of your Directorate be increased to ensure
25 continuation of its high standard of quality and
26 control for drugs. If this is not a fair ques-
27 tion, just say so. Do you feel your staff is
28 adequate to provide a complete inspection service
29 as you desire to do in Canada?
30



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Morrell 137
dir (MacLeod)

1
2 DR. MORRELL: By no means.

3 THE CHAIRMAN: Then you would not
4 object to a recommendation of that type?

5 DR. MORRELL: No. I am happy to
6 hear of it.

7 THE CHAIRMAN: Another question is:
8 to what extent does your inspection service, if
9 you are able to answer this, enable you to say
10 drugs offered for sale in Canada are safe for
11 use and are as represented in content - I am not
12 saying in puritive quality.

13 DR. MORRELL: You mean can I give
14 you an idea of what percentage of drugs would
15 not be --

16 THE CHAIRMAN: Yes, that is the
17 sort of thing I wanted to get at; how far you
18 are able to go. You say your service is unable
19 to say whether these things are so or are not
20 so.

21 DR. MORRELL: Somewhat over a
22 year ago I endeavoured --

23 MR. HANSARD: I wonder would you
24 speak up, Doctor. It is awfully hard to hear.

25 DR. MORRELL: I am sorry.

26 THE CHAIRMAN: It is not a good
27 room for making yourself heard.

28 DR. MORRELL: A little over a
29 year ago I tried to dig this material out of
30



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Morrell 138
dir (MacLeod)

our figures and I think I can put some credence
in the figure I obtained.

I think about 30% of the pharma-
ceuticals that were examined were unsatisfactory
in one way or another. About 70% were quite
satisfactory in every way.

Now, that may sound like an alar-
ming figure but it is not particularly alarming
because many of the differences that were found
from the stated potency were small and yet they
were beyond the limits permissible. It might be
from 95 to 105% of the stated potency and they
may have been 92% of the stated potency. A good
many of them were in that category. The manufac-
turers were certainly told about it.

Those that were taken off the
market were a much more smaller proportion of
the total.



1
2 THE CHAIRMAN: I suppose, doctor,
3 where you say a drug might prove to be a slightly
4 lower potency than was correct, the drug wouldn't
5 have any danger, but would be less effective?

6 DR. MORRELL: It would be less
7 effective. One wonders whether the patient
8 would recognize it because recognition is difficult
9 when it is so much less, such a small difference.
10 Nevertheless it wasn't according to the regulations
11 and must therefore be classified as an unsatisfactory
12 drug. I don't know what percentage would be
13 objectionable to the extent that they have to
14 be withdrawn. It might be five per cent or less.

15 Now, there is one other figure - one
16 other fact I would like to emphasize. We don't
17 waste our time except for products that are
18 suspicious, we have some reason for suspecting.
19 On the whole, therefore, the products that are
20 most unsuspicious in this country from our
21 standpoint at least - there were a small
22 proportion that were quite unsatisfactory and
23 we take whatever action was necessary. Does
24 that answer your question?

25 THE CHAIRMAN: Yes, I was going to
26 ask one question carrying it a shade further.
27 In the case you have found an unsatisfactory
28 drug is there any substantial percentage in
29 which you have found in the dosage because of
30



1
2 not being satisfactory it would be dangerous to
3 take in what would be an ordinarily prescribed
4 dose?

5 DR. MORRELL: Well, I could think
6 of one that was improperly labelled. It was
7 supposed to be something else. Fortunately it
8 wasn't a dangerous drug in itself, but nevertheless
9 you wouldn't want to take it when you were
10 thinking you were getting something else. This
11 five per cent or thereabouts might be dangerous
12 to the point that a patient would not get the
13 response that he should get and delay in changing
14 the treatment or doing something that might be
15 a danger to him, yes, but none that I know of -
16 I know of none that I could find that were
17 poisonous or would cause a man to be ill due to
18 taking a dose of the drug.

19 THE CHAIRMAN: No drugs you found
20 actually increased the poor state of health of
21 the patient, they might not improve it?

22 DR. MORRELL: They might not improve
23 him, true.

24 THE CHAIRMAN: Is it your opinion
25 that the drugs offered for sale in Canada are
26 generally safe for use?

27 DR. MORRELL: It is my opinion that
28 they are.

29 THE CHAIRMAN: Only five per cent you
30



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Morrell 141

would think perhaps ...

DR. MORRELL: That was a special selected group, you know. I don't know about the general picture across the board. It might be even less.

THE CHAIRMAN: The percentage might be substantially less than five per cent?

DR. MORRELL: Yes, that would be not satisfactory for use.

THE CHAIRMAN: I wonder if counsel have any questions?

MR. HUME: If I may ask the doctor on two points. Doctor my name is F.R. Hume. I represent the Drug Manufacturers Association. We have met.

DR. MORRELL: Yes, we have.

MR. HUME: Your particular Directorate, I suggest to you, has not the best of public relations because I don't think generally the public appreciates the very important work that you would do for Canada. May I ask you this question with respect to the available staff that you have. Is it your opinion you have sufficient inspectors and lab people to adequately test and check drugs in Canada?

DR. MORRELL: No.

MR. HUME: Could you indicate whether or not this number you think should be



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Morrell, cr-ex. 142
(Hume)

1
2 doubled or tripled knowing the population and
3 the demands upon your staff, I wonder if you
4 could indicate to the Commission how adequate
5 you consider your personnel, the number of your
6 personnel rather?

7 DR. MORRELL: I don't know whether
8 it would be appreciated in some quarters if I
9 said here.

10 MR. HUME: It is a good place to
11 say it doctor, with respect.

12 DR. MORRELL: Thank you, oh maybe
13 two or three times as many as we have, perhaps
14 three times.

15 MR. HUME: I asked this question, sir,
16 because in a brief handed to me this morning to
17 be read to this Commission, the brief of the
18 Canadian Federation of Agriculture it is
19 suggested in the brief the Commission determine
20 from you, I presume, on page 7, as to whether or
21 not the Directorate would itself, given an
22 adequate staff, be able to adequately protect the
23 consumer against impure and poor quality drugs
24 in the event there was a widespread resort made
25 to prescription by generic name and to dispensing
26 un-trade marked drugs. This is a submission put
27 to this Commission. You are in the box now
28 and I presume you have finished your evidence.
29 I wonder if you could indicate to the Commission
30



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Morrell, cr-ex 143
(Hume)

1
2 what you would consider to be an adequate staff
3 to be able to protect the public against any
4 drug that might be improper, whether generic name
5 or otherwise?

6 DR. MORRELL: You are giving us
7 quite a job to do. I don't know the Food and
8 Drug Directorate should act as a control
9 laboratory for all people who want to manufacture
10 pharmaceuticals in Canada. I don't think that
11 is our function. We are acting as a police
12 agency, I believe. If you want me to analyse
13 every batch of a drug or pharmaceutical sold in
14 Canada, I think it would be an astonishing number.
15 I believe we would need - when I said three times
16 the number of inspectors I wasn't speaking of
17 that kind of job.

18 MR. HUME: So this suggestion of
19 the Canadian Federation of Agriculture would in
20 your opinion involve numbers of personnel which
21 would be almost astronomical?

22 DR. MORRELL: Yes, we have tried
23 to get the number of pharmaceuticals sold in
24 this country by going through the catalogues of
25 all the pharmaceutical people who offer
26 preparations for sale. They total 25000.
27 If each one made two batches of them there is
28 50,000 batches for analysis. It is a lot, I
29 believe, to do that.
30



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Morrell, cr-ex. 144
(Hume)

1
2
3 MR. HUME: My last point is in
4 connection with the inspection of drugs or
5 pharmaceutical products in marketable form
6 imported into Canada. You have indicated, I
7 think, you spot check samples. I just wondered
8 and perhaps you have given this, if you know
9 what percentage of pharmaceutical products that
10 come in are, in fact, subject to a test by your
11 department, less than one per cent, ten per cent,
12 fifty per cent or have you any idea?

13 DR. MORRELL: It would be a pure
14 guess. It is certainly more than one per cent
15 and possibly less than 50 per cent.

16 MR. HUME: Thank you.

17 MR. HANSARD: I wonder if I might
18 put two questions to Dr. Morrell. Doctor, on
19 the question of brand names I noted you said,
20 I am pleased to hear you say, it was the
21 manufacturer who was important rather than the
22 brand name he might happen to use. Speaking of
23 the type of manufacturer that you had in mind
24 when you said that do all the difficulties you
25 spoke of in quality control or in testing these
26 various drugs, making sure they are suitable for
27 human consumption and for the purposes for which
28 they are advertised and so on, does all that
29 indicate that type of manufacturer should spend
30 substantial sums of money on such controls?



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Morrell, cr-ex. 145
(Hansard)

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3 DR. MORRELL: Which type of
4 manufacturer?

5 MR. HANSARD: The type of
6 manufacturer you had in mind when you said it
7 is the manufacturer who is important rather
8 than the brand name.

9 DR. MORRELL: Well, I certainly
10 believe that a manufacturer should. In fact,
11 he is the first one and the most important one
12 in this chain of quality control. He has the
13 opportunity to check the raw materials, to
14 supervise the compounding of these things and be
15 able to check the product when it is finished.
16 He has the opportunity to check every batch or
17 lot that he makes. A control agency such as
18 ours can only, and perhaps should only spot check,
19 so that the manufacturer has the first and main
20 responsibility for the quality control of his
21 product.

22 MR. HANSARD: That is it is his
23 responsibility to do all these things that are
24 necessary?

25 DR. MORRELL: Yes.

26 MR. HANSARD: And the more particular
27 drugs and types of medicines he is handling the
28 more of this work he has?

29 DR. MORRELL: Yes.

30 MR. HANSARD: I wonder if, for my own



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Morrell, cr-ex 146
(Hansard)

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2 information, Dr. Morrell, when we talk about
3 the manufacturer I am not sure that I understand.
4 Of course I know the existence of the man who
5 manufactures the primary chemicals and so on that
6 go into these products, but do you include in
7 manufacturers the man who imports in bulk and
8 then breaks it down into what, shall we say,
9 manageable proportions.

10 DR. MORRELL: According to our
11 law here he is a manufacturer if he puts his name
12 on it and takes the responsibility for it.

13 MR. HANSARD: Your manufacturer is that
14 broad in the sense you are using it?

15 DR. MORRELL: Yes.

16 MR. FRAWLEY: Dr. Morrell, dealing
17 with the matter of generic names as against brand
18 names, if there is any merit in getting away from
19 brand names and going to generic names can anything
20 be done unless the physician who writes this
21 prescription does it?

22 DR. MORRELL: You mean it is up to
23 the physician to decide whether he is going to
24 write generic or brand names?

25 MR. FRAWLEY: Might I put it this
26 way, if a physician gives me a prescription and
27 uses a brand name - I don't know how I would,
28 but suppose I could find out, perhaps I could
29 look at Mr. MacLeod's green book and get the
30



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Morrell, cr-ex 147
(Frawley)

generic name and I walked into the drugstore
and said here is a prescription and I want so
and so, using the generic names. Would he tell
me to be on my way?

DR. MORRELL: I think ethically
he would have to tell you that.

MR. FRAWLEY: He would have to fill
it?

DR. MORRELL: He would have to fill
th prescription as written.

MR. FRAWLEY: He would tell me to
take my prescription back to the doctor if I
wanted generic names.

DR. MORRELL: Yes, that is probably
true.

MR. FRAWLEY: I am not saying whether
it is right or wrong. I am offering no opinion
about it at all, but if there is any merit in
getting away from the brand name to the generic
name it does seem to me it must start with the
physician.

I was a little intrigued with what
you said to Mr. MacLeod. If I understand it
you do some inspections outside of Canada.

DR. MORRELL: Yes.

MR. FRAWLEY: I suppose every medicine
that is sold in Canada and I am referring to
prescription drugs perhaps, or other drugs, must



1
2 be licensed.

3 DR. MORRELL: No, no.

4 MR. FRAWLEY: Which is under the
5 Proprietary and Patent Medicine Act?

6 DR. MORRELL: That is a different
7 type of license. The license I was talking about
8 were the licenses for the biological type of
9 products, the vaccine, the seria, parenteral
10 antibiotics, insulin, liver extract, things
11 of that sort. They are all licensed. They would
12 be inspected wherever they were.

13 MR. FRAWLEY: But you don't attempt
14 to inspect pharmaceuticals made in Europe and sold
15 in Canada?

16 DR. MORRELL: No.

17 MR. FRAWLEY: There are a good many
18 medicines made in Switzerland and sold in Canada,
19 made, patented and prescribed and sold in Canada?

20 DR. MORRELL: That is true.

21 MR. FRAWLEY: You make no attempt to
22 go to Switzerland to see how they are made?

23 DR. MORRELL: No.

24 MR. FRAWLEY: With respect to these
25 medicines what does your Directorate attempt to
26 do, if anything?

27 DR. MORRELL: Analyse them either when
28 they are imported or off the domestic market.

29 MR. FRAWLEY: You analyse...
30



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Morrell, cr-ex 149
(Frawley)

DR. MORRELL: The finished product.

MR. FRAWLEY: Did you say the base
products?

DR. MORRELL: The finished product.

MR. FRAWLEY: The tablet that is
sold, made in Switzerland and sold in Canada?

DR. MORRELL: Yes.

MR. FRAWLEY: You analyse the tablet
in your laboratory.

DR. MORRELL: That is right.

MR. FRAWLEY: You satisfy yourself
with that?

DR. MORRELL: Yes.

MR. FRAWLEY: You make no attempt
to investigate the manner in which it is made
in Switzerland?

DR. MORRELL: No.



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Morrell, cr-ex 150
(Frawley)

MR. FRAWLEY: Now, Dr. Morrell,
does your Directorate, under either of these
two statutes concern itself at all with price?

DR. MORRELL: No.

MR. FRAWLEY: Not in any respect.
I asked you that question because, as you are
of course aware, this inquiry is being conducted
under section 42 of the Combines Investigation
Act, and I note from Mr. Henry's preface to the
green book these words:

"The inquiry has not been
concerned with the level of
prices as such, or whether
prices are reasonable.
Rather, as the statute
contemplates, the inquiry has
been concerned with the question
whether the prices of drugs in
Canada are the result of
conditions or practices related
to monopolistic situations or
restraint of trade".

And that is as it must be under the Combines
Investigation Act, but if there is no concert
in the industry in any way, and therefore
nothing objectionable from the standpoint of
restraintive trade or restraint on competition,
then there is no duty so far as you know under



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Morrell, cr-ex 151
(Frawley)

any federal statute to look at and examine the price as such?

DR. MORRELL: No, I know of no law or regulation that would require that.

MR. FRAWLEY: It just is nothing that concerns you. You are naturally only concerned with the terms of your statutes, and there is nothing in either of your statutes that directly or indirectly requires you to be concerned at least with the price at which drugs are sold in Canada?

DR. MORRELL: No.

MR. FRAWLEY: This is something that just aroused my curiosity. In the Proprietary or Patent Medicines Act, you have some prohibition. Section 8 I am thinking of, and all very salutary. For medicines that are outside the provisions of this statute, the Proprietary or Patent Medicines Act, there are no similar prohibitions, I take it, or are there?

DR. MORRELL: No, none in the Food and Drugs Act.

MR. FRAWLEY: None by the Food and Drugs Act or the regulations made under that statute?

DR. MORRELL: No.

MR. FRAWLEY: It just ran through my mind. You prohibit by section 8 of the Patent



Morrell, cr-ex 152
(Frawley)

Medicines Act, you direct that:

"No proprietary or patent
medicine intended for
administration to infants
under one year of age shall
contain any derivative of
coal-tar that, in
the opinion of the
Advisory Board, is dangerous
to children under one year of
age."

My question is that there is nothing like that in
any other statute?

DR. MORRELL: No.

MR. FRAWLEY: Well, that does not
mean, does it, that there may be preparations
available for administration to infants under one
year that might be dangerous but are not prohibited
because they are not within the provisions of
Section 8 subsection 2 of the Patent Medicines
Act?

DR. MORRELL: That prohibits his
from registering.

MR. FRAWLEY: Once you get away
from registered medicines?

DR. MORRELL: There is no prohibition
against the sale of any drugs in this Act or
regulations.



Morrell, cr-ex 153
(Frawley)

MR. FRAWLEY: When you say this Act,
you mean the Food and Drugs Act and Regulations?

DR. MORRELL: That is right.

MR. FRAWLEY: The only prohibitions
are with respect to registered medicines?

DR. MORRELL: Yes.

RE-EXAMINATION BY MR. MACLEOD

MR. MACLEOD: One or two questions
arising out of questions by my learned friends.
You had discussions about the number of people,
with Mr. Hume, I believe, that would be required
to check every batch. As I understood your
previous evidence, you look not only at products,
but at the system followed in the plant?

DR. MORRELL: Yes.

MR. MACLEOD: And I understood you
to say that if you found the system satisfactory
in a plant, that you might not feel it necessary
to visit it for some months again?

DR. MORRELL: That is so.

MR. MACLEOD: Would that apply
equally whether the plant is manufacturing its
products in generic or brand names?

DR. MORRELL: Yes.

MR. WHITELEY: Is there any reason
you see that all manufacturers of drugs should
not be registered or licensed?

DR. MORRELL: Administratively it



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Morrell, cr-ex 154
(Whiteley)

would be easy for me, but it is a matter of
government policy.

MR. WHITELEY: Do you see any reason
why all importers of drugs should not be
registered?

DR. MORRELL: That again is a matter
of government policy.

THE CHAIRMAN: It would be
administratively easy, and at least you would know
who they were?

DR. MORRELL: Yes.

THE CHAIRMAN: Referring to the
smaller drug manufacturers of Canada, I think
you said it was among the smaller ones that you
were more likely to find unacceptable procedure?

DR. MORRELL: Yes.

THE CHAIRMAN: Could you state what
proportion of the small manufacturers you think
are found to be not acceptable to the Directorate?

DR. MORRELL: No, I don't think I
could give you the figure.

THE CHAIRMAN: Could you say whether
most of them have acceptable procedures, or less
of them?

DR. MORRELL: Well, I could say
many of them have acceptable procedures.

THE CHAIRMAN: But you cannot say
whether it is the majority?



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3 DR. MORRELL: No I couldn't.

4 MRS. PLUMPTRE: You mentioned
5 that sometimes you ask for withdrawal of drugs
6 because they are not up to standard. Has there
7 been any occasion when you have had to withdraw
8 a drug from the market for any other reason?

9 DR. MORRELL: Yes, I presume that
10 the question meant not up to standard in respect
11 to the competition?

12 MRS. PLUMPTRE: That is what I
13 understood you had said before, but are there
14 other reasons for the withdrawal?

15 DR. MORRELL: Yes.

16 MRS. PLUMPTRE: What would those
17 reasons be?

18 DR. MORRELL: Well, for one thing
19 that the tablet wouldn't disintegrate in the
20 intestinal tract. This we have had to do on
21 a number of occasions.

22 MR. PLUMPTRE: Have you had to ever
23 withdraw them, for example, because you found
24 they hadn't been used correctly?

25 DR. MORRELL: No, if a drug hadn't
26 been used correctly, do you mean by the physician,
27 or ----?

28 MRS. PLUMPTRE: Yes, I mean by the
29 physician.
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DR. MORRELL: Well, yes, there was one indeed that was a combination of anti-biotics that was causing deafness , and we refused to license a combination that we didn't think was necessary. That is true. That is the equivalent of withdrawing it, I presume.

THE CHAIRMAN: There are no further questions. Thank you Dr. Morrell.

--A short recess



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3 THE CHAIRMAN: Now, Mr. Kirk.

4 MR. HUME: Mr. Chairman, might
5 this be an appropriate time for me to ask you
6 what the agenda is for tomorrow? I don't have
7 it, and I don't want to interrupt Mr. Kirk;
8 perhaps he will take the rest of the afternoon.
9 I wonder if you could indicate what the agenda
10 is for tomorrow, and if anybody is submitting a
11 brief and has a copy within sound of your voice
12 it would be convenient for counsel to receive a
13 copy in advance.

14 THE CHAIRMAN: There may not be
15 any written briefs. For the moment this is the
16 arrangement. In the morning there is Dr. L.B.
17 Pett, perhaps Mr. Layton with him, from the
18 Department of National Health and Welfare.
19 They are concerned with research. Following
20 them, Mr. J.W.T. Michel, Commissioner of Patents,
21 and at 2 o'clock in the afternoon there is Dr.
22 Schecter of Ottawa.

23 MR. HUME: Thank you, Mr. Chairman.

24 THE CHAIRMAN: There will be repre-
25 sentatives also from the Department of Veterans'
26 Affairs, but we may not have them until Thursday
27 morning.

28 MR. HUME: Thank you, sir.
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SUBMISSION OF THE CANADIAN FEDERATION OF AGRICULTURE

Appearance: Mr. David Kirk,
Secretary-Treasurer

MR. KIRK: Thank you, Mr. Chairman and members of the Commission. I would like to start off, if I may, by saying that our President, Dr. H.H. Hannon, had intended and would have been here today had it not been for a bad accident to his hand which prevented him being here. It is coming along beautifully, thanks to the wonder drugs that we have these days.

In making this brief submission to the Restrictive Trade Practices Commission, the Canadian Federation of Agriculture would like to begin by making its position perfectly clear.

First of all, the Canadian Federation of Agriculture is a federation of farm organizations of all kinds in all provinces of Canada, except Newfoundland. Its interest in the question of the cost of drugs is a citizen interest. Our general mandate from our membership to interest ourselves in this question derives from: (1) The broad and continuing responsibility placed in the national office of the CFA to concern itself in matters which concern the welfare of its members, and (2) a resolution which was passed at our annual meeting in February of 1961 specifically



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3 instructing us to interest ourselves in the
4 question of drug costs and prices. A copy of
5 this resolution will be found at the conclusion
6 of this submission marked Appendix "A".

7 In the second place we cannot
8 pretend to have special knowledge of this
9 subject. Any special investigation we might do
10 on our own would merely duplicate in a most
11 inadequate way the very excellent work in this
12 area which has already been done by the Investi-
13 gation and Research Branch, and which will be
14 subsequently carried out by the Commission
15 itself.

16 It will be found, as you are well
17 aware, Mr. Chairman, that the context of our
18 remarks often - the wording indicates that this
19 was written some time ago. It was submitted to
20 the Commission shortly after we received the
21 study of the Director; and the wording some-
22 times will reflect that particular timing.

23 Our submission therefore will
24 essentially be devoted to three types of comment:
25 (1) The conclusions which we draw from a study
26 of the findings of the Director of the Investi-
27 gation and Research Branch as to the implications
28 of the Director's finding for the consumer of
29 drugs. (2) Recommendations with regard to
30 policy or with regard to the taking of steps



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2 necessary to formulation of adequate policy.

3 (3) Observations directed to the Commission
4 itself respecting the direction which its own
5 activities might take at this stage of the
6 inquiry. And I propose in the reading of this
7 brief to omit those sections containing recom-
8 mendations for Commission action since they
9 have presumably been given your full considera-
10 tion.

11 The Unprotected Consumer of Drugs

12
13 There is one thing that, as a
14 matter of principle, seems quite clear to us.
15 In the sale of ethical drugs we have a situation
16 where, because the product is bought on prescrip-
17 tion, the consumer is almost completely unable
18 to exercise any of the ordinary consumer prero-
19 gatives. He has not real option, first of all,
20 as to whether or not to make the purchase. He
21 has no option as to what he will purchase and
22 normally no knowledge, in fact, of the nature
23 of his purchase. Under present circumstances
24 it is only at the initiative of the doctor or
25 the druggist that any steps whatever can be
26 taken to protect him from unnecessarily high
27 charges.

28 We would think that this is a
29 unique situation, and one that makes it parti-
30 cularly necessary for the consumer to be



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3 afforded the maximum legislative and administra-
4 tive protection by public agency.

5 A reading of the study by the
6 Director of Investigation and Research makes it
7 impossible to arrive, in our view, at any other
8 conclusion that that in fact the consumer is
9 being vastly overcharged for most of the ethical
10 drugs which he purchases.

11 THE CHAIRMAN: Perhaps I should
12 ask you at this stage whether your conclusions
13 of this type throughout the document are based
14 entirely on the contents of the Green Book?

15 MR. KIRK: They are, yes.

16 The justification given by the
17 industry for this state of affairs essentially
18 rests upon two grounds: the first that the
19 existing system of manufacture and distribution,
20 with its supporting legislation, assures the
21 public of receiving products of the highest
22 standards of quality and purity, and second
23 that the research services and programs in the
24 drug industry are of immense value to the public
25 and both justify and explain the high prices
26 charged for drugs. The use of the word "high"
27 is, of course, my use and not that of the
28 pharmaceutical industry.

29 As far as protection to the
30 consumer is concerned, it would be necessary,



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3 in order to attach weight to this argument, to
4 believe that the protection afforded to the con-
5 sumer or capable of being afforded to the consu-
6 mer through the Food and Drug Directorate are
7 not to be relied upon. We cannot believe that
8 in order to get drugs of purity and high quality,
9 we must submit year after year to altogether
10 excessive charges, totalling many millions of
11 dollars, as a result of maintaining a distribu-
12 tion and pricing system for drugs which is effec-
13 tive in eliminating the competition necessary to
14 lower drug costs to reasonable levels. We simply
15 cannot accept this thesis.

16 As far as research is concerned,
17 there are two or three points to be considered.
18 In the first place, from a strictly Canadian
19 point of view, it is apparent from the material
20 presented from the Director of Investigation
21 and Research that our Canadian drug companies
22 do not greatly add to the volume of fundamental
23 research conducted in Canada, and that we there-
24 fore have little or no stake, on research
25 grounds, in perpetuating the present exploita-
26 tive distribution arrangements. In the second
27 place one could hardly conceive of a more
28 expensive way of getting research done than by
29 the preservation of the present manufacturing,
30 distribution and pricing system in the drug



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2 business. In the third place, it is not all
3 clear how much of the truly significant research
4 leading to the discovery of better drugs is
5 conducted by drug companies. The evidence points
6 to the conclusion that the drug company contri-
7 bution is small. This is something that should
8 be closely inquired into by the Commission.
9 There is evidence in the report of the Director
10 that a good deal of research undertaken by drug
11 companies leads merely to the proliferation of
12 special brands of drugs that add little to useful
13 knowledge.

14 In the opinion of the Canadian
15 Federation of Agriculture, the situation is
16 simply grotesque. Here we are a small country in
17 which, practically all, if not all, significant
18 basic medical research is done by other than the
19 drug companies. Whatever policies may be
20 followed in other countries it seems clear that
21 Canada should by all rational standards of self-
22 interest apply itself to developing a system of
23 drug distribution that would keep drug costs to
24 its people at an absolute minimum. Instead we
25 have a drug industry with its nature and prices
26 determined to a considerable degree by the
27 policies of the United States drug industry and
28 supported in this by our laws relating to
29 patents, trademarks and retail distribution.
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3 The result is that we have in Canada a level of
4 drug prices that is higher, probably, than any
5 other place in the world, except the United
6 States. We submit that nothing could possibly
7 be more unsatisfactory than this situation.

8 THE CHAIRMAN: Mr. Kirk, is that
9 a statement of opinion or fact, when you except
10 the United States? You say that in Canada the
11 level of drug prices is higher, probably, than
12 in any other place in the world, except the
13 United States.

14 MR. KIRK: This is substantially
15 based on a series of lists of comparative
16 prices in other countries, which rather consis-
17 tently showed Canadian and United States prices
18 at the top of the list, sir.

19 THE CHAIRMAN: Have your studies
20 indicated that the prices in the United States
21 are about the same as those in Canada? I
22 wonder whether you mean if prices are higher in
23 Canada or the same?

24 MR. KIRK: I think the answer is
25 about the same. The answer is that I am not
26 clear where the balance would lie.

27 THE CHAIRMAN: I had in mind
28 asking the question. There is the 11% tax in
29 Canada.

30 MR. KIRK: That's true.



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3 In making these statements we
4 intend to suggest that in principle the situa-
5 tion is simple and clear cut - that the consumer
6 is being very greatly overcharged for essential
7 and necessary drugs. We would moreover point
8 out that the incidence of sickness and poor
9 health is not uniform and therefore the inci-
10 dence of the costs of these expensive drugs is
11 not uniform. This increases the seriousness of
12 the situation from the point of view of equity
13 to the individual drug user. The cost of these
14 drugs to persons and families who are unfortunate
15 enough to need them in considerable quantities
16 can be economically quite disastrous.

17 Having said this, however --

18 MR. HANSARD: I notice the witness
19 has twice left out two very provocative headings.

20 MR. KIRK: I am delighted to use
21 them.

22 The Causes of the Problem

23 Having said this, however, it is
24 of course necessary to recognize that the problem
25 with which we are faced is not an easy one to
26 deal with or solve. The basic circumstances
27 that make possible the present situation seem to
28 be as follows:-

- 29 1. The system of patents in the
30 drug business, plus the



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2 proliferation of trade-marked
3 products and compounded products.

4 2. The virtually complete effec-
5 tiveness of price maintenance in
6 the retail field.

7 3. The helplessness of the consu-
8 mer in exercising normal consumer
9 prerogatives.

10 4. The failure or inability of the
11 medical profession to fight the
12 system (in a very real sense the
13 doctor should consider himself the
14 representative of the consumer,
15 and should accept corresponding
16 responsibilities). We are
17 speaking in the economic sense
18 there.

19 By the terms of reference the
20 present enquiry is concerned with whether the
21 prices of drugs in Canada are related to monopo-
22 listic practices or restraints of trade. We
23 feel that the findings of the Director illustrate
24 clearly that while there may well be no provable
25 criminal offences involved under the law as it
26 now stands, a very substantial degree of monopoly
27 and restraint of trade leading to excessive
28 prices and the elimination of price competition
29 does in fact exist. We further understand that
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3 under Section 42 and the related Section 18 of
4 the Combines Investigation Act the Commission
5 has broad powers to recommend corrective action.

6 I think the next section I won't
7 read, with your permission, as it refers to
8 recommendations with respect to this hearing.

9 Recommendations

10 The following recommendations are
11 made in light of the findings of the Director
12 of Investigation and Research. We would qualify
13 them to this extent - that if the hearing of the
14 Commission as suggested above reveals real dangers
15 to public health in action such as we suggest,
16 or if better ideas are forthcoming, we would of
17 course defer to such findings.

18 1. We were very struck by one
19 statement in particular in the article "Drugs,
20 Doctors and Drug Promotion" which was reproduced
21 in the study of the Directors from the Canadian
22 Medical Journal. This statement is: "A minimum
23 and absolute requirement in the utilization of a
24 mixture is to know what it contains". We take
25 it that this means that no doctor should
26 prescribe anything by trade name unless he is
27 perfectly clear that he knows what he is prescri-
28 bing. It further follows, it seems to us at
29 least, from this that there is seldom any need
30 for a doctor ever to prescribe by anything



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2 other than the generic name or names of a product
3 or mixture. We therefore feel that it should be
4 a requirement of medical practice, provided by
5 law or by the Code of Ethics of the medical
6 profession, that doctors prescribe in no other
7 way than by generic description. If a doctor
8 believes that the product of a particular firm
9 is the best and cheapest available, he could
10 inform the patient verbally of the name of the
11 firm.

12 2. The Commission, we suggest,
13 should undertake to ascertain in the clearest
14 and most unequivocal terms whether or not the
15 Food and Drug Directorate would itself, given
16 adequate staff, be able to adequately protect
17 the consumer against impure and poor quality
18 drugs in the event there was widespread resort
19 made to prescription by generic name and to
20 dispensing of un-trademarked drugs. We are
21 greatly disturbed by the apparent suggestion
22 by the drug industry that exploitative control
23 in the drug industry by a relatively few firms,
24 and through the general use of trade-marked
25 products, is necessary to protect the health
26 of the public. In this connection we would
27 note that the basic supplies of most new drugs
28 are now imported. The problem is to reduce the
29 restriction and control, legal or institutional,
30



1 which is presently exercised over their entry.

2 MR. KIRK: If I may say, in view
3 of the fact this section was referred to earlier
4 in the hearings, there was some discussion with
5 Dr. Morrell and I note the turn that that
6 discussion took with the implication, it seemed
7 to me, being left that we were recommending that
8 the Food and Drug Directorate undertake all
9 control procedures and test every product and
10 every lot of every product and I find no such
11 suggestion in this paragraph whatever.

12 We think that the usefulness of the
13 patent law in connection with drugs is thrown
14 into real question by the Director's study, to the
15 point where we would be inclined to suggest
16 eliminating altogether the application of patent
17 to drugs or the process of their manufacture.
18 In the House of Commons return on a list of
19 specific patents held for a group of drugs,
20 reproduced on pages 34, 35 and 36 of the
21 Director's Report - I apologize for the word
22 "Report" creeping in there, Mr. Chairman. I
23 understand it is the wrong word. We find that
24 of 99 holders of patents for the various drugs,
25 only three were resident in Canada. The
26 Canadian patentees held exactly nine patents
27 out of a total of 425. We are forced to the
28 conclusion that drugs and the processes of their
29 manufacture should be made unpatentable in Canada.
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Kirk, dir 170

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3 THE CHAIRMAN: I wonder, Mr. Kirk,
4 if I might interrupt the reading at this stage
5 of this recommendation: "That the drugs and
6 the processes of their manufacture should be
7 made unpatentable in Canada". I am wondering
8 whether your organization had made any study
9 of what the results of the abolishment of
10 patents in drugs would be, apart from what I
11 presume is indicated as a reduction in price.
12 Have you considered any results that may flow
13 from that action? Do you think it would have
14 any effect on the manufacture of drugs in Canada?

15 MR. KIRK: Only to this extent, sir,
16 that I would be and the people with whom I have
17 discussed this inclined to think, I think, that
18 such a change might very well result in a
19 reduction in the number of separately identifiable
20 drug products put out as mixtures and compounds
21 with small differences between them; which are
22 essentially for the same purpose and might very
23 well simplify the picture, as far as the
24 utilization of available drugs for the medical
25 profession was concerned.

26 THE CHAIRMAN: I wonder if you have
27 thought what the effect would be on the incentives
28 to manufacturers to engage in research for new
29 drugs?

30 MR. KIRK: Well, I think it is in



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2
3 the first place implicit in our statement, as
4 far as research in Canada is concerned, we are
5 inclined to think even were there a reduction
6 in research that this lack could be very well
7 and more economically made up by an increase
8 in government contributions to research funds,
9 of which they are very considerable now.

10 We think that a very strong case
11 could be made for refusing the granting of trade
12 marks to any drug or mixture that can be purchased
13 only on prescription. Such drugs cannot be
14 advertised. No physician should be dependent
15 upon the use of trade names in prescribing for his
16 patients.

17 From the information available in
18 the Director's study it would seem to use that
19 it would be unwise for the federal or provincial
20 governments to place any reliance, in their
21 overall assessment of the adequacy of medical
22 research in Canada, upon the contributions made
23 by the drug companies. Certainly this contribution,
24 judging by the report of the Director, is not
25 in any case very substantial as far as basic research
26 goes. We see no grounds for feeling that the
27 contribution made by the drug industry in this
28 respect justifies the high level of prices
29 experienced in the drug industry.

30 The high level of sales and promotion



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Kirk, dir. 172

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2 expense in the industry is clearly one area in
3 which very substantial savings could be made.
4 While the level of profits in the drug manufacturing
5 industry is high, it is also true that much of
6 the actual expense incurred by these companies
7 is of no benefit to the consumer. Farm machinery
8 for one, I might include.

9 MR. HANSARD: Let us not get into
10 farm machinery, surely.

11 MR. FRAWLEY: It is a good wholesome
12 western subject.

13 THE CHAIRMAN: This is the Federation
14 of Agriculture speaking.

15 MR. HANSARD: That is all right. We
16 are here dealing with drugs.

17 MR. KIRK: The point I was making
18 was this is not a unique situation.

19 MR. HANSARD: This is not a new song
20 for you.

21 MR. KIRK: I am sorry to say it is
22 not. I would be pleased if the situation did not
23 exist in any industry.

24 In this, as in so many other fields,
25 one find that the extent of the overcharge to
26 the consumer cannot simply be measured by looking
27 at profits earned. It must also be judged by
28 the amount of unnecessary real resources that are
29 devoted to the business. The money that is spent
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2 on advertising and promotion should, we are
3 convinced, be drastically reduced.

4 On page 242 of the Director's study
5 the statement is made, in connection with a
6 discussion of the place of industry representatives
7 and promotional literature in the job of informing
8 doctors about new drugs, that:

9 "There does not seem to be any
10 concise, complete and current
11 source of information about drugs
12 available to a practising doctor,
13 who, obviously, would not have
14 the time or facilities to keep
15 abreast of all current medical
16 literature. This is the lack
17 which drug manufacturers purport
18 to satisfy through detail men
19 and informational literature. It
20 can only be said that this service
21 is undoubtedly useful in some
22 respects. On the other hand,
23 it is costly and has been subject
24 to severe criticism on the grounds
25 that the information supplied
26 tends to be favourable information
27 about the product which the drug
28 manufacturer is promoting and
29 that, in any event, much of it is
30



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more promotional than
informative."

It does seem to us that the lack
of an objective, critical publication which reviews
and lists and appraises new drugs for the use of the
doctor is a serious one. The article in the Canadian
Medical Journal already referred to clearly explains
that both the positive and negative aspects of the
properties of any drug must be taken into account.
This is a service that should be provided. Properly
done, it should provide an effective substitute for
the heavy promotional activities undertaken by
drug companies. We would recommend that such a
service be instituted, at government expense. In
a regular publication of this kind drugs should
be discussed and evaluated in a strictly scientific
way, and the conclusions to be arrived at from such
an evaluation set out in plain language. The
editorship of such publication should be under
the editorial responsibility of a body of men
of the highest integrity and competence in the
medical (and I should add pharmaceutical. That
was really intended there) profession.

The importance of this recommendation
is underlined by the fact that there is much
opinion and evidence to the effect that the
promotion of new drugs can often lead to their
excessive or unwise use, or to the prescription



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2 of a new expensive drug when objective appraisal of
3 the evidence would indicate that an older, less costly
4 drug would do just as well or better. If, as would
5 understandably appear to be the case, the
6 complexity of modern drug therapy poses major problems
7 for the practicing physician, then the trend should
8 be in the direction of reducing, to the minimum
9 necessary for effective utilization of the new
10 drugs, the number of separately identifiable products
11 on the market. The proliferation of special
12 mixtures under trade names seems to be working
13 in the other direction.
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3 8. It would certainly appear to
4 us that the various provincial Pharmacy Acts,
5 especially those which make it impossible for
6 businesses not owned by pharmacists to engage
7 in the sale of drugs other than patent medicines
8 and proprietary drugs is against the public
9 interest. We do not of course for a moment
10 question the necessity for ensuring that drugs
11 are always dispensed by qualified pharmacists,
12 but we do very much question the assumption by
13 pharmacists of effective economic control over
14 the retail drug business. There are a great
15 many businesses in which professional people are
16 employed in capacities where their skilled know-
17 ledge is necessary to protect the health and
18 safety of the public, and we are not aware of
19 any widespread failure on their part to do their
20 job properly. But they do not all have to control
21 the business in which they serve. The problem
22 can become especially acute in rural areas and
23 small towns where even the very limited competi-
24 tion that may exist between drug stores is
25 lacking. It is not, we should make it clear,
26 that we have anything against the family drug
27 store as an institution. Other things being
28 equal it would perhaps be the most desirable
29 form of enterprise. But the remarkable success
30 enjoyed by pharmacists in, in the words of the



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3 Director, ensuring that "there is virtually no
4 price competition in the sale of ethical drugs
5 at the retail level" makes it clear that some
6 form of competition should be injected into the
7 business.

8 APPENDIX "A"

9 High Cost of Drugs

10 WHEREAS one of the major contributing costs in
11 medical care is the high cost of prescriptions;
12 WHEREAS drug companies, particularly in the U.S.A.,
13 and in Canada as well, are reportedly under care-
14 ful scrutiny and investigation by governmental
15 authorities, both in respect to unnecessary high
16 cost and in price collusion;

17 WHEREAS the physicians must also bear a substan-
18 tial share of responsibility, in that they repor-
19 tedly all too frequently prescribe a brand name,
20 instead of using the generic or medical term

21 RESOLVED that the Board of the Canadian Federa-
22 tion of Agriculture review this problem with a
23 view towards placing it before the executive of
24 the Canadian Medical Association; and

25 FURTHER RESOLVED that any action taken by the
26 Canadian Federation of Agriculture be passed on
27 to all Canadian Federation of Agriculture member
28 organizations with the recommendation that they
29 in turn adopt similar action with respect to
30 Provincial Medical Association across Canada;



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2 and

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4 FURTHER RESOLVED that the Canadian Federation
5 of Agriculture maintain close liaison on this
6 question with the Canadian Association of Consu-
7 mers and with appropriate Federal Government
8 agencies which deal with health and with restric-
9 tive trade practices; and

10 FURTHER RESOLVED that Federal authorities conti-
11 nue their investigations with respect to the
12 highcost of drugs so that consumers may have
13 have badly needed protection.

14 Thank you.

15 THE CHAIRMAN: Do you wish to add
16 any comments, sir, to the brief?

17 MR. KIRK: I think not, sir.

18 THE CHAIRMAN: Have you any ques-
19 tions, Mr. Macleod?

20 MR. MACLEOD: No sir.

21 THE CHAIRMAN: Counsel, I presume,
22 have some questions?

23 MR. HUME: Do you want to just
24 carry on, Mr. Chairman?

25 THE CHAIRMAN: In the ordinary
26 way we would not go more than five hours which
27 is probably lengthy enough for counsel. I
28 think the reportorial staff who, I believe, are
29 going to try and produce the daily record may
30 find five hours are about enough. If you are



1
2 only going to be a few minutes we will go on.

3 MR. HUME: My friend, Mr. Hansard,
4 says under his breath he plans to be some time.
5 I think having received this today I would be
6 far more brief tomorrow if I had the chance to
7 study it tonight.

8 MR. FRAWLEY: If you are allowing
9 three days don't you think you have had a pretty
10 full day?

11 THE CHAIRMAN: Will you be here
12 tomorrow, Mr. Kirk?

13 MR. KIRK: Yes, sir.

14 THE CHAIRMAN: I think we had
15 perhaps better adjourn to tomorrow morning. It
16 will mean putting some people over to a certain
17 extent tomorrow. They won't be able to start
18 at 10 o'clock.

19 MR. MACLEOD: I beg your pardon,
20 sir?

21 THE CHAIRMAN: It will mean some
22 of the people who are on tomorrow will be
23 delayed.

24 MR. MACLEOD: Yes.

25
26 --- Whereupon the hearing adjourned to 10 a.m.
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30



Ottawa, Ontario,
Wednesday, July
5th, 1961.

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--- On resuming at 10 a.m.

R.L. Lewis and J. Chapman, Official Reporters, sworn.

THE CHAIRMAN: We will resume the hearing. Mr. Kirk was giving his evidence. You had completed all the questions you wished to ask, Mr. MacLeod?

MR. MACLEOD: Yes sir.

THE CHAIRMAN: Mr. Hansard, do you have any questions?

MR. HANSARD: Yes I do, Mr. Chairman.

CROSS-EXAMINATION BY MR. HANSARD

You tell us you are the secretary-treasurer of the Canadian Federation of Agriculture. I don't think you told us anything about your occupation apart from that. Have you been secretary-treasurer for long?

MR. KIRK: For about eight years.

MR. HANSARD: How old are you?

MR. KIRK: I am forty years old.

MR. HANSARD: What was your activity prior to that?

MR. KIRK: I was in the secretarial and publicity staff of the Saskatchewan Wheat Pool prior to that.

MR. HANSARD: Does that cover your career this far?

MR. KIRK: In all its important aspects, yes.

MR. HANSARD: At the opening of the



1 brief you presented yesterday, you, I think, were quite
2 humble as to your qualifications to deal with the subject,
3 and I see on the first page of the brief first of all
4 that you say that the interest of your Association in
5 the matter is what you describe as a citizen interest.
6 By that I take it you mean that by any other potential
7 user of drugs, they are interested in the subject
8 generally?

9 MR. KIRK: That is right.

10 MR. HANSARD: And you have no discretion
11 in this, any more than I have?

12 MR. KIRK: No.

13 MR. HANSARD: Then you went on to say
14 that:

15 "We cannot pretend to have
16 special knowledge of this
17 subject. Any special
18 investigation we might do
19 on our own would merely duplicate
20 in a most inadequate way the
21 very excellent work in this
22 area which has already been
23 done by the investigation and
24 research branch, and which
25 will be subsequently carried
26 out by the Commission itself."

27 Can I take it from that that you and your Association
28 have made no separate study or research? You have
29 relied, as did Mrs. Plumptre, on what you found out
30



1 in the so-called green book, the statement of the
2 Directorate?

3 MR. KIRK: That is correct.

4 MR. HANSARD: There was one thing
5 yesterday, I think you said that you corrected your
6 brief in one instance where it referred to that
7 statement of the Director's "report", that you should
8 not perhaps have used that word. As I read over your
9 brief last night, it uses that word in two places, and
10 it uses in a number of places the expression "findings
11 of the Director". Now, did you take cognizance of the
12 preface of the Director's statement in connection with
13 the preparing of your brief?

14 MR. KIRK: Yes sir.

15 MR. HANSARD: Then you observed the
16 opening phrase: "To avoid misunderstanding, it is
17 emphasized that this is not a report". You saw that?

18 MR. KIRK: Yes sir.

19 MR. HANSARD: And are you aware, Mr.
20 Kirk, that it is not the function of the Director to
21 make findings?

22 MR. KIRK: Well, I am not sure that
23 when I used the word findings, I think this is the best
24 way to answer that question, when I used the word
25 findings I was using it in a sense of having arrived
26 at certain facts and materials and judgments. There
27 may be a technical meaning to findings that I didn't
28 intend.

29 MR. HANSARD: Perhaps we could say
30



1 that they were your findings in the material of the
2 Director's statement, is that it?

3 MR. KIRK: No, that is not my point
4 either. Of course, a good deal of what we have said
5 is in that category, of course?

6 MR. HANSARD: I would like to take you
7 on a few points in your brief. I don't propose to
8 cover everything, but the first thing I would like to
9 ask you about is what appears on page 2, under the
10 caption: "The Unprotected Consumer of Drugs". You
11 are not suggesting in the passage that follows that
12 caption, are you, that the consumer of drugs, and I
13 am talking now about prescription drugs, receives no
14 protection from the doctor who prescribes?

15 MR. KIRK: I am certainly not suggesting
16 that he receives no protection in a medical sense, in
17 a health sense. Certainly not that.

18 MR. HANSARD: Are you suggesting that
19 the doctors take no interest in the cost of drugs to
20 what you call the consumer and I will call the
21 patient?

22 MR. KIRK: I don't know to what extent
23 doctors take that interest.

24 MR. HANSARD: You don't know?

25 THE CHAIRMAN: I think, Mr. Hansard,
26 there was nothing in that paragraph that refers to the
27 doctors, is there?

28 MR. HANSARD: No, but I am referring to
29 doctors because doctors are the people who prescribe.
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THE CHAIRMAN: The paragraph is clear as far as it goes. People are coming here and presenting briefs, they have been invited, at least asked if they wish to make representations, and they are coming voluntarily. They are not coming here as parties in litigation.

MR. HANSARD: I quite appreciate that, Mr. Chairman, but I also think I am entitled, when somebody comes here and puts in a brief which has a caption: "The Unprotected Consumer of Drugs", to find out what is meant by that.

THE CHAIRMAN: The paragraph surely explains what he is meaning?

MR. HANSARD: It does not cover the point I want. I am asking him if he is making any suggestion, and he says no.

THE CHAIRMAN: I would have thought that that was the case without even being asked.

MR. HANSARD: I am glad to hear that, Mr. Chairman.

MR. KIRK: Could I say that the answer to my question was that I didn't know the degree of protection afforded in an economic sense by the doctor to the consumer. It does not say that no such steps are ever taken.

MR. HANSARD: And you are telling me this morning that you don't know what degree of protection is desired from that source?

MR. KIRK: I am telling you that the



1
2 evidence in the report indicates to me that the
3 consumer is overcharged for drugs.

4 MR. HANSARD: That may well be what
5 your general thesis is, but I am talking now about
6 this particular paragraph where you say that the
7 consumer is unprotected?

8 MR. KIRK: Yes, you are.

9 MR. HANSARD: We are clear on that.
10 On page 2, again under the next heading which is
11 "The Consumer of Drugs is Overcharged", I think you
12 have now anticipated the question I was going to put
13 to you. You say that you are drawing that inference
14 from what you find in the Director's statement, is
15 that it?

16 MR. KIRK: Indeed.

17 MR. HANSARD: And that is your opinion,
18 your reading of the statement?

19 MR. KIRK: Yes sir.

20 MR. HANSARD: And that also applies
21 to the sentence underlined which follows, and says:

22 "A reading of the study by
23 the Director of Investigation
24 and Research makes it impossible
25 to arrive at any other
26 conclusion than that in
27 fact the consumer is being
28 vastly",
29 you use the word "vastly",
30 "overcharged for most of the



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ethical drugs which he
purchases."

Again, I take it that that is your opinion of what the
Director's statement says?

MR. KIRK: Yes sir.

MR. HANSARD: And you are relying
solely on that, on your reading of that statement?

MR. KIRK: Yes sir.

MR. HANSARD: Now then, if you would
follow me to page 3 of your brief. The first full
paragraph on that page deals with the question of
research, is that correct?

MR. KIRK: Yes.

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2 MR. HANSARD: And among other things, in
3 that paragraph you say: "It is apparent from the
4 material presented from the Director of Investigation
5 and Research that our Canadian drug companies do not
6 greatly add to the volume of fundamental research
7 conducted in Canada and we therefore have little or no
8 stake on research grounds in perpetuating the present
9 exploitative distribution arrangements". Is that word
10 "exploitative" your own?

11 MR. KIRK: Yes, sir.

12 MR. HANSARD: It is a good one; I never
13 heard it before.

14 To get back to what you said there, you
15 are basing yourself again when you make that statement
16 on your reading of the Director's statement.

17 MR. KIRK: Yes, sir.

18 MR. HANSARD: The statement that there
19 is very little research done by the drug industry in
20 Canada, are you basing yourself on that, or have you
21 made any other inquiries?

22 MR. KIRK: The statement is there, basing
23 it on the report.

24 MR. HANSARD: You have made no other
25 research, whether in Canada or out of Canada, as to
26 research by the Canadian drug industry?

27 MR. KIRK: No, I have made no other
28 research.

29 THE CHAIRMAN: I wonder, Mr. Hansard,
30 if it is to be taken as accepted that all of this



1
2 material, insofar as any statements in the brief, are
3 derived from the Director. That is how I understood
4 the witness' evidence.

5 MR. HANSARD: That doesn't cover my
6 position. It isn't a question of being covered by
7 the brief.

8 THE CHAIRMAN: Based on it.

9 MR. HANSARD: Well, based on it. The
10 one thing I should say now is that the last impression
11 I wish to have conveyed here is that this so-called
12 statement of material is in any way a Bible, and this
13 witness in his brief has made statements of fact which
14 he said he gleaned from the Director's statement, and
15 I want to make it clear that it is only his opinion,
16 because my submission at the proper time will certainly
17 be that there is no justification whatever for these
18 very extravagant statements in this brief to be found
19 in the Director's statement.

20 THE CHAIRMAN: I am wondering if it
21 could be shortened up a bit. The witness has said
22 that these statements are the result of his reading
23 of the document, the Green Book, and the findings
24 which he derives from it, and I wonder if we need go
25 over every item.

26 MR. HANSARD: I am in your hands, but I
27 do feel if we are to be confronted with statements of
28 this kind in briefs of this kind we should be able to
29 question them.

30 THE CHAIRMAN: I wonder if the situation



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2 hasn't been made clear.

3 MR. HANSARD: Well, it has been made
4 clear on two points. I have three or four more. I
5 do say that when people are allowed to come at large
6 and put in briefs of this kind they should answer
7 questions on them. I don't think I have been wrong,
8 but if it has already been covered by me you can stop
9 someone else, but I am the first one.

10 THE CHAIRMAN: I am wondering if the
11 statements of the witness have not made it clear,
12 that you will get the same answer on the other points.

13 MR. HANSARD: Do I understand, then,
14 that your Commission is satisfied - for instance, let
15 me look at page 8 - that your Commission is satisfied
16 to let me just put a general question about this
17 document when we find the statement made that the
18 situation - I can't find it for the moment. On page
19 3, I beg your pardon, not 8, where we find at the
20 bottom of page 3: "In the opinion of the Canadian
21 Federation of Agriculture the situation is simply
22 grotesque". Is that going to be based on the statement?

23 THE CHAIRMAN: As I understand the
24 witness' evidence, the entire document is based on
25 his reading of that Green Book and no independent
26 examination or studies have been made apart from this,
27 and whatever conclusions are stated here have come
28 from his reading of the book. That is how I understand
29 his evidence.

30 MR. HANSARD: May I put this to the



1
2 witness.

3 You have heard what the Chairman has
4 just said. Is the Chairman's understanding correct,
5 Mr. Kirk?

6 MR. KIRK: Yes, sir.

7 MR. FRAWLEY: Mr. Chairman, perhaps I
8 may interject at this point, because I am interested
9 in what somebody called yesterday the ground rules.
10 As I understand it, the Commission has set a series
11 of public hearings throughout Canada and they invite
12 people to come and make representations. I rather
13 understood that was the sort of overall attitude of
14 the Commission, and they would be glad to have the
15 Green Book supplemented, because I understand that the
16 Green Book is not to be cross-examined, that Mr.
17 MacLeod, for instance, is not to go into the witness
18 box or any people who assisted him in this research.
19 I presume that is so, because I have heard nothing
20 to the contrary. If people come into the box to
21 either commend or criticise the Green Book but without
22 having made any scientific investigation of their own,
23 are there any statements to be accepted or otherwise?

24 As I understand it, we have people
25 coming to say that this is very good or it is completely
26 wrong.

27 MR. WHITELEY: I think you overlooked
28 the fact that this book contains a number of recommen-
29 dations.

30 MR. FRAWLEY: Yes, and as good and as



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2 forcible as the material on which they are based.
3 As Mrs. Plumptre said to me yesterday, "I made no
4 independent examination of what appears to be the
5 fact that all drugstores charge the same for prescrip-
6 tions and I have just relied on what Mr. MacLeod has
7 in the Green Book". Speaking very humbly for myself,
8 I think it is very helpful for people like the
9 Canadian Association of Consumers or the Canadian
10 Federation of Agriculture to come and speak to the
11 Green Book, and I am just a little confused as to the
12 situation, because you have made it clear to Mr.
13 Hansard - and perhaps I drew the wrong implication -
14 well, the witness is only saying what is in the Green
15 Book; why bother about it. But I rather thought
16 that it did do something to the Green Book to have
17 the Canadian Federation of Agriculture say that that
18 was a good inquiry and it did disclose a certain
19 situation.

20 I am not wishing to take any position,
21 but I would like to know how welcome or unwelcome or
22 how valuable or worthless are people who come and
23 simply say: "I have read the Green Book and I think
24 it is good and I will make some suggestions, make
25 some recommendations based on that".

26 I don't know whether all this has
27 contributed anything at all, but it is a little
28 confusing from the interchange between yourself and
29 Mr. Hansard.

30 THE CHAIRMAN: Mr. Frawley, when people



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2 come before us and present a brief which does not
3 contain any new factual information, then we have
4 nothing new to help us.

5 MR. FRAWLEY: Yes, but when people have
6 no means to conduct an investigation of their own -
7 and I don't think you will find anybody in this
8 country, Provincial Government or otherwise, that
9 will offer you anything that will compare in thorough-
10 ness - I am using that word broadly - the thoroughness
11 of this statement, and if you were looking for some-
12 thing of that sort, I am just looking again for the
13 ground rules.

14 THE CHAIRMAN: We want to check in
15 every conceivable way the accuracy of facts which
16 are said to be set out in the Green Book, we want to
17 ascertain in what respect they are correct, in what
18 respect they are wrong and in what respect they may
19 be modified. That may alter the picture one way or
20 another. We want to get that information, but we
21 also do want to get from the various groups in the
22 country their ideas of what steps may be taken to
23 improve the situation.

24 MR. FRAWLEY: Is it intended that
25 people like my friend Mr. Hansard and my friend Mr.
26 Hume will have an opportunity to test the statements
27 in the Green Book?

28 THE CHAIRMAN: They will have an
29 opportunity to present any evidence which they
30 desire to present which may prove that some of these



1
2 statements are incorrect.

3 MR. FRAWLEY: They will make their own
4 substantive statements, but will they have an oppor-
5 tunity to cross-examine on the Green Book?

6 THE CHAIRMAN: The cross-examination
7 may go on for six months.

8 MR. HANSARD: With the greatest
9 possible deference, you say where a witness comes
10 forward and puts in a brief which contains no new
11 factual material other than what is in the Green
12 Book, then it is a waste of time to cross-examine.
13 That is paraphrasing, but I gather that is what
14 your feeling is.

15 But I want to stress that here is a
16 brief, for instance, which says: "...we must submit
17 year after year to altogether excessive charges,
18 totalling many millions of dollars, as a result of
19 maintaining a distribution and pricing system for
20 drugs which is effective in eliminating the competi-
21 tion necessary to lower drug costs to reasonable
22 levels. We simply cannot accept this thesis". I
23 read that as meaning that this witness comes forward
24 and says that he finds in the Green Book evidence
25 that year after year there have been altogether
26 excessive charges totalling many millions of dollars,
27 and I say that is going far beyond the Green Book
28 and that is why I want to ask these things, and if
29 anybody is going to come to say that the situation
30 is grotesque, I don't know how to deal with the



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2 situation, but I have been endeavouring to do it.
3 Surely I am being exercised by the more free use of
4 adjectives. When I find the use of words like
5 "grotesque" and "excessive", and so on, I find they
6 are offensive where I come from, and they are used
7 in that way in the press. If he says: "I take the
8 Green Book as my facts", well, let him do that and
9 let him make qualifications if he is qualified to do
10 so. But he is not qualified to pass judgment on the
11 Green Book and put offensive adjectives on it. That
12 is my point.

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1 THE CHAIRMAN: Yes, I quite understand
2 your position, Mr. Hansard. But it seems to me what
3 it boils down to is that the brief is expressing an
4 opinion and that is all; an opinion of what they draw
5 from the green book and it may be an inaccurate
6 opinion in some respects and it may be accurate in
7 others.

8 MR. HANSARD: Yes, Mr. Chairman. What
9 I am confronted with is here this has been thrown
10 into an open hearing here. People come and use this
11 very strong and I suggest very inaccurate language.
12 Surely somebody ought to be given the privilege,
13 as this is going on the record and being written down
14 and taken in public, of saying so and of bringing out
15 from the witness that it is so.

16 Now perhaps I am dull - I don't know -
17 but it does seem to me there is a grave danger, if
18 people are allowed to come here and make these
19 extravagant statements, and I say that advisedly, make
20 these extravagant statements and if they are to get
21 away with it without some comments from somebody -
22 that is what I am trying to do.

23 You take that "exploitive distribution
24 arrangements". What in the world does that mean
25 except it has an offensive sound to it.

26 You come to this wonderful statement
27 "The result is that we have in Canada a level of drug
28 prices that is higher probably than in any other place
29 in the word except the United States".
30



1 Well, if you do not want me to examine
2 him where he gets that from, I don't mind but I
3 challenge it.

4 We come to page 5 of his brief where
5 he says:

6 "We feel that the findings
7 of the Director illustrates
8 clearly that while there well
9 may be no provable criminal
10 offences ---"

11 What is the purpose of putting that in there "no
12 provable criminal offences". Is there a suggestion
13 that there are criminal offences that cannot be proved?

14 If you do not want me to ask him about
15 that, I will not.

16 Then, well I really don't know where
17 to go -

18 MR. FRAWLEY: Mr. Chairman, I certainly
19 would not want anyone to think, yourself or the
20 Commission or my learned friend, Mr. Hansard, that I
21 object at all or see anything wrong with my friend,
22 Mr. Hansard, cross-examining.

23 I have been too long at the bar to
24 think there is anything wrong with cross-examination
25 but I suggest from that we must know because it is
26 just possible that you might scare off anybody else
27 and then you would have only this green book. Perhaps
28 you could just call it a day and look at the green
29 book and make a report.
30



1 MR. HANSARD: I am never sure which
2 side you are on. At the moment you seem to be a
3 little bit against me. A moment ago I thought you
4 were on my side.

5 MR. FRAWLEY: If I can keep you
6 confused ---.

7 MR. HANSARD: You have me confused.
8 I am completely confused.

9 All I am trying to do is not scare
10 off people who are going to come forward with
11 contributions that are of assistance. I am trying to
12 scare off people from coming forward and making
13 extravagant and inaccurate statements said to be
14 based on the green book and when they are not I can
15 cross-examine them.

16 THE CHAIRMAN: Actually we are
17 concerned with people who are going to come forward
18 and who may offer something which is of value on the
19 conclusions that should be drawn from this inquiry.

20 We do not want them to stop coming
21 forward or to frighten them from being cross-examined
22 in the rather severe fashion --

23 MR. HANSARD: Mr. Chairman, I take
24 offence at the suggestion that my cross-examination
25 was severe because it was not severe. I can be
26 much more severe than that.

27 MR. FRAWLEY: I have seen him worse.

28 THE CHAIRMAN: I can understand that.
29 I did not intend to mean it was severe at the moment.
30



1 I can understand people outside if they get the
2 impression they are going to be cross-examined at
3 length might say "Why should I come forward and give
4 my evidence at all. Why should I do this?"

5
6 We want to be sure people are not
7 frightened off. Whether they should not be frightened
8 off by what happens or not, they may be frightened
9 off. We do not want to get the situation where
10 people will not come forward with useful information,
11 whether it is pro or con.

12 MR. HANSARD: I think you will
13 probably go along with me to this extent: that useful
14 information can be brought before this Commission
15 without the use of these extravagant statements. I
16 would like to feel somebody else agrees with me they
17 are extravagant statements because so far everybody
18 seems to have accepted them as being accurate and
19 drawn from the green book.

20 MR. HUME: Mr. Chairman, if my learned
21 friend, Mr. Hansard, wants me to agree with him I
22 will be happy to do so.

23 MR. FRAWLEY: For a per diem fee.

24 MR. HUME: I have refrained from
25 taking part in the discussion so far with some
26 difficulty. I simply would like to state, sir, with
27 respect and with all the sincerity that I can, that
28 notwithstanding the fear that you may have that
29 people will be frightened off if the word gets about
30 that they are going to be subjected to some sort of



1
2 third degree; it is my respectful submission that in
3 order to achieve the result of this inquiry that when
4 persons do come forward, as Mr. Kirk has done - and I
5 have seen Mr. Kirk before other Boards and I have had the
6 privilege of cross-examining him -

7 I think Mr. Kirk attempts to do the
8 best job he can for his Association and is undoubtedly
9 sincere in what he says. I think Mr. Kirk expected and
10 I think others should expect that their statements
11 will be subject to the ordinary test of cross-examination.

12 I am well aware, sir, and I know from
13 very very long experience that evidence that is not
14 subject to cross-examination in a court of law is not
15 evidence.

16 A witness who dies after examination-
17 in-chief before he can be cross-examined has his
18 evidence struck out.

19 THE CHAIRMAN: That does not apply
20 strictly to the proceedings we have. We are not
21 governed by court rules of evidence.

22 MR. HUME: I realize that; but that
23 rule of evidence has been evolved after several
24 centuries of practical experience. I think it is a
25 good one.

26 My concern with Mr. Kirk coming
27 forward with the statements in the brief, which I notice
28 in the Globe and Mail have been well summarized. There
29 is no qualification in the newspaper articles that
30 are going across the country as a result of the public



1 hearing that the statements are based upon the witness's
2 reading of the green book or that this is information
3 only. It is stated by one newspaper this morning
4 as a fact that the Association feels certain things.

5 I simply suggest that while I do not
6 want to transgress on the ruling you have made, there
7 are one or two questions that I would like to put to
8 Mr. Kirk that if you want to stop me, you do so, sir,
9 and I will sit down.

10 THE CHAIRMAN: I have not made a final
11 ruling. I am just suggesting to Mr. Hansard perhaps
12 he has gotten the point that he was endeavouring to
13 get.

14 MR. HUME: Mr. Kirk, if you would be
15 good enough to turn to page 2----

16 THE CHAIRMAN: One moment, Mr. Hume.
17 I am not at all sure that Mr. Hansard has finished.

18 MR. HUME: I am sorry. I thought Mr.
19 Hansard ---

20 MR. HANSARD: I have given up, Mr.
21 Chairman. You say my point is made. I hope it is.
22 I am not going to attempt to cross-examine under these
23 circumstances.

24 MR. FRAWLEY: I notice Mr. Sedgwick
25 has just joined Mr. Hansard.

26 MR. SEDGWICK: No, I just walked in.

27 MR. HANSARD: Mr. Sedgwick is testing
28 whether or not this is a public hearing.

29 MR. HUME: Well now, will you turn to
30



1
2 page 2 and the paragraph that is headed, "The
3 Consumer of Drugs is Overcharged".

4 The second sentence:

5 "The justification given by
6 the industry for this state
7 of affairs essentially rests
8 upon two grounds: the first
9 that the existing system of
10 manufacture distribution with
11 its supporting legislation,
12 --- "

13 What do you mean, sir, by "with its supporting
14 legislation"?

15 MR. KIRK: Well, primarily the
16 legislation with respect to registration of patents,
17 to trade names and to the authorities given provincially
18 in the retail distribution field.

19 MR. HUME: And you preface the entire
20 sentence I started to read and won't read again with
21 the words "the justification given by the industry".
22 My second question on that paragraph is where did
23 you get the information as to the justification by the
24 industry? This is not a statement in the green book.
25 Where did you find it? Who told you this? You see,
26 the industry has not said anything in the green book
27 yet. I just wondered where this information came from.

28 MR. KIRK: Well, for example, on page
29 13 --

30 MR. HUME: Yes.



1
2 MR. KIRK: -- of the green book there
3 is a statement quoted of the General Manager of the
4 Canadian Pharmaceutical Manufacturers Association, Mr.
5 Conder.

6 MR. HUME: Yes.

7 MR. KIRK: He says:

8 "One of the main problems
9 facing Canada's ethical
10 pharmaceutical manufacturers
11 is the deprecators of brand
12 name pharmaceuticals who
13 are attempting to show that
14 considerable savings can be
15 realized by purchasing under
16 generic name. By using
17 fallacious economic arguments
18 and incorrect examples.....
19 and so on"

20 Then he says:

21 "The reputable manufacturers of
22 ethical pharmaceuticals
23 requires a heavy investment
24 in laboratory equipment to
25 ensure that his products
26 meet the exacting requirements
27 of his profession clientele.
28 Naturally, the initial outlay
29 and maintenance costs of this
30 equipment alone add considerably



1 to his production costs.

2 And any cut-back in

3 quality control procedures

4 must necessarily be done at

5 the expense of the product."

6 MR. HUME: You interpret that ---

7 MR. KIRK: That seems to me to be
8 perfectly well implied.

9 MR. HUME: May I point out to you I
10 think you perhaps have fallen innocently into the
11 same error that Mrs. Plumptre fell into yesterday.

12 The green book attributes that not
13 to the industry but to an individual. It shows the
14 source and the name of the man who said it. You
15 parlay that into "the justification given by the
16 industry". I make that comment only in passing.

17 Would you not agree that the green
18 book attributes that to the man named Conder. You
19 have turned that into the justification by the whole
20 industry.

21 MR. KIRK: Well, sir, when I make a
22 public statement in a publication connected with our
23 industry about some agricultural problem, I make such
24 statement as I would expect Mr. Conder would do in
25 his position as General Manager of the Canadian
26 Pharmaceutical Manufacturers Association, with a
27 consciousness; that I should be attempting as
28 responsibly as possible to reflect the opinion of
29 the industry, in so far as I can do so. I was assuming
30



1 he was trying to do the same thing.

2
3 MR. HUME: May I take it this brief
4 is the opinion of your industry? You would assume
5 that everything you have said in here is the opinion
6 of the agricultural industry in Canada; on the same
7 basis.

8 MR. KIRK: I would assume that
9 everything I have said in here represents a responsible
10 expression of views on behalf of the Association and
11 of the authority I have to make such statements.

12 MR. HUME: My second point, Mr. Kirk,
13 is - we are getting along very well - on page 5, sir.
14 At the top of page 5 paragraph 4 you are talking about
15 the causes of the problem.

16 "The failure or the inability
17 of the medical profession to
18 fight the system".

19 May I ask you if you can assist me -
20 I went through the green book last night - where that
21 information is indicated in the green book.

22 MR. KIRK: Well, there are a number of
23 statements found in the green book that express the
24 concern of the medical profession and even actually
25 of the pharmaceutical profession, if I could recall
26 correctly, about the difficulties that have arisen
27 with respect to the trade practices with respect
28 to accurate and efficient prescriptions under the
29 present practices in the industry. I think perhaps
30 you would agree this statement exists.



1 MR. HUME: Yes.

2
3 MR. KIRK: I would say that these
4 practices are intimately related to the matter of -
5 as I think is also clear from the study - are intimately
6 related to the question of the maintenance of prices in
7 the industry. The two go together.

8 MR. HUME: So your reference to the
9 inability of the medical profession to not in effect
10 consider themselves representative of the consumer is
11 taken from the statement that appeared in the green book.

12 MR. KIRK: Yes.

13 MR. HUME: Not from any information you
14 had, apart from that.

15 MR. KIRK: No. I would also say, of
16 course, that I do not think it is improper to consider
17 that we have a situation that, in our view, on the
18 evidence in the book, indicates an overcharge in the
19 industry; that there is a system of drug manufacture,
20 sale and distribution, an overcharge does exist. There
21 is an implication in this statement, I think, that
22 the medical profession as a profession could perhaps
23 have modified that situation, had they, as a profession,
24 desired to do so.

25 MR. HUME: Now, Mr. Kirk, I think as
26 perhaps my last point I would ask you to turn to page
27 4, we will turn to something that I think is strictly
28 a recommendation of your Association and has nothing
29 to do with the green book.

30 I want to ask you one or two questions



1 in the paragraph which you have numbered one. You
2 quote a statement from the Medical Journal and then
3 the third sentence you have I take to be a recommendation:

4 "It further follows, it seems
5 to us at least, from this
6 that there is seldom any
7 need for a doctor ever to
8 prescribe by anything other
9 than the generic name or names
10 of a part or mixture. We
11 therefore feel that it should
12 be a requirement of medical
13 practice, provided by law
14 or by the Code of Ethics of
15 the medical profession that
16 doctors prescribe in no other
17 way than by generic description."

18 This, I take it, Mr. Kirk, is a recommendation of your
19 Association?
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MR. KIRK: Right.

MR. HUME: This is not - may I just ask you, sir, whether or not you seriously mean a doctor is to be required by law to prescribe by generic name if he, in his wisdom as a qualified medical man, decides he wants to prescribe by a trade name? Is this a serious suggestion of your Association?

MR. KIRK: Certainly that is the way it is phrased. You may consider it a little presumptuous.

MR. HUME: No. I just want to see exactly what you mean, if you think a product that the doctor has decided his patient requires...

MR. KIRK: That is right.

MR. HUME: He knows a particular manufacturer makes that product with a certain quality and control in which the doctor has confidence that he is going to be prevented by law from doing so?

MR. KIRK: From doing so - I don't think we say anything of this sort in here.

MR. HUME: Perhaps, that is the way it reads.

MR. KIRK: We say, I think...

MR. HUME: That is the way it reads and I think this is the time to clear it up. You say "We therefore feel it should be a requirement of medical practice provided by law or the Code of Ethics" - I am dealing now with the law part of it,



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"that the doctor prescribe in no other way than by the generic description".

MR. KIRK: I think...

MR. HUME: You do add the doctor could tell the patient at his deathbed, be able to explain to him we know this product and you had better buy such-and-such a product, and the patient is presumably able to do something about it.

MR. KIRK: It would go beyond the intent of our recommendation. Perhaps we haven't made it clear that in prescribing the generic name he might name the company making that product.

MR. HUME: Well now, Mr. Kirk, you have put your finger right on it. What is a trade name other than a generic drug with a company's identification mark?

MR. MACLEOD: I object. That is false. It is absolutely wrong. It is "A" brand of "X" drug. It is entirely different. The question being put to the witness makes a statement of fact.

MR. HUME: I would like to speak to that. I say a trademark in the Trademarks Act is a distinction or mark or word that is used in association with wares to identify those wares with a particular manufacturer. That is what a trademark is. My question to the witness, I submit, is perfectly proper. I will repeat it. What is a trademark other than a pharmaceutical product by generic name with a manufacturer's label or stamp



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2 or identification attached to it? If your doctor
3 can say I am prescribing by generic name, but there
4 is no harm in adding on the prescription you'd
5 better buy so-and-so, you are right back to trade-
6 marks again.

7 THE CHAIRMAN: I am not sure, Mr.
8 Hume, the witness is in a position to give an opinion
9 on the legal definition of trademark.

10 MR. HUME: I am not asking him to. I
11 am asking what else it is.

12 MR. KIRK: What we are saying it seems
13 to me is we think that the doctors should be, it is
14 important that the practice be - that prescription
15 be by generic name and that the practice of pres-
16 cribing trade names be discontinued, by trade names
17 be discontinued. A trade name is a different descrip-
18 tion than a generic name.

19 MR. HUME: He can identify the drug
20 having prescribed it by its generic name - it is
21 all right with you if he identifies it as being a
22 particular source, being manufactured by a parti-
23 cular company, the doctor?

24 MR. KIRK: We don't - this point
25 perhaps we didn't, we don't give adequate considera-
26 tion to. I don't know if it would be important
27 to leave with the doctor the authority - we don't
28 exclusively tie this to the question of law. The
29 Code of Ethics perhaps would be better. It doesn't
30 tie - if it could be arranged, it does not tie you



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2 to this narrow rigid point.

3

4 I suppose there are cases where the
5 doctor would feel that it was so important that
6 the product of a particular firm in this case as
7 opposed to similar products of other firms, it was
8 important that firm's product be used. It was a
9 matter of professional concern to him that product
10 was used. If there were cases like this we would
11 certainly not suggest that he be limited in his
12 ability to assure those products were given.

13

14 Our impression tended to be if a
15 doctor prescribed what he wants in generic terms
16 and you have a qualified pharmacist at the other
17 end filling that prescription that should take care
18 of the situation.

19

20 MR. HUME: Mr. Kirk, what about the
21 situation where the doctor wants to make sure his
22 patient receives the purest product possible. He
23 is not quite sure if he uses a generic name whether
24 it comes from some back-street manufacturer without
25 much control or whether it was imported and was
26 not one of the samples that was tested by Dr. Morrell's
27 Department from one of the factories Dr. Morrell
28 mentioned yesterday where they wouldn't be too
29 happy about the product, what if the doctor wants
30 to make absolutely sure that the product used for
his patient is of a certain standard of purity, is
it not justifiable for him then to indicate a
manufacturer in whom he has confidence?



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2 MR. KIRK: I think there, that the
3 proper answer to that, is that suggestion of our
4 brief in another section where we are sceptical
5 of the reality of this particular fear you are
6 presenting under a good system of food and drug
7 administration.

8 MR. HUME: Is this scepticism, Mr.
9 Kirk, I take it from information you got from
10 reading the Green Book or is this a scepticism you
11 have as a matter of a Canadian citizen, that you
12 have been told this and believe it?

13 MR. KIRK: Well, sir, it is one of
14 the points made in this brief. We are saying a
15 great deal of care should be taken by the Commission
16 to ascertain through qualified people, including
17 the Director of the Food and Drug Administration
18 just exactly what the, you know, whether in fact -
19 I mean this obviously is a question that isn't -
20 that gave judgment or even much information is
21 contained in the Green Book on this point, although
22 there are - well, not much information, but we are
23 saying that this should be closely inquired into.

24 We made the general proviso that we,
25 you know, we had established some of our recommen-
26 dations if they result in, would in fact result in
27 jeopardizing the health of the patients involved,
28 that certainly we wouldn't support their being
29 implemented, in that case.

30 MR. HUME: If the Commission's



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2 investigation indicates that one way that a medical
3 practitioner may be sure of getting a certain
4 quality, if that is the result of the investigation,
5 this is one way to be sure of it, would then your
6 Association object to permitting the doctor to
7 have the right either by law or by his Code of Ethics
8 to prescribe a manufacturer's product?

9 MR. KIRK: That isn't the way I would
10 put it. I would say if the Commission finds it is
11 the only practicable way we would be prepared to
12 agree it must be. You said one way, if there are
13 other ways that are more satisfactory from an
14 economic standpoint it would be those ways that
15 should be adopted.

16 MR. HUME: Otherwise the doctor by
17 your suggestion is to be required by law to pre-
18 scribe in the way you have suggested.

19 MR. KIRK: Or by the Code of Ethics
20 of the profession.

21 MR. HUME: What do you mean by that,
22 by common consent of the doctors themselves?

23 MR. KIRK: Yes sir, exactly.

24 MR. HUME: Thank you.

25 MR. FRAWLEY: Mr. Kirk, there is
26 just something you say on page 2 I would like to
27 deal with. You say: "Under present circumstances
28 it is only at the initiative of the doctor or the
29 druggist that any steps whatever can be taken to
30 protect him from unnecessarily high charges". The



1
2 first thing I would like to do is eliminate the
3 provocative words at the end. The industry
4 certainly challenges the prices are unnecessarily
5 high. Eliminating those words, I want to discuss
6 with you the position of the doctor. Does the
7 doctor know what his patient is going to be charged
8 for, say, 25 tablets of one of these new cortisone
9 derivatives and what is the reason he should know?

10 THE CHAIRMAN: Is this witness in a
11 position to answer that question?

12 MR. FRAWLEY: Just as an ordinary
13 citizen, of course, I don't know what the detail
14 man tells the doctor. I am putting it to you, does
15 the detail man tell the doctor what the druggist
16 is going to charge for 25 tablets of some new corti-
17 sone derivative?

18 THE CHAIRMAN: How would this gentle-
19 man know? He is neither a detail man nor doctor.

20 MR. FRAWLEY: Do you know, Mr. Kirk?

21 MR. KIRK: No, I don't. I think it
22 is a very relevant point and should be established.

23 MR. FRAWLEY: If the doctor doesn't
24 know, if the doctor doesn't know is he going to
25 busy himself down into the drugstore to find out
26 what the patient he is giving the prescription to
27 is going to pay for the cortisone derivative?

28 MR. KIRK: There is a great deal of
29 discussion here and there on the subject that
30 indicates that the doctor from a strictly medical



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Kirk
cr ex (Frawley)

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point of view is confronted with a major problem of informing himself with the multiplicity of new drugs. Based on that I would be inclined to think the addition of detailed knowledge of prices in this multiplicity would not be something he would be likely to have taken on in any very extensive way.

MR. FRAWLEY: I am not suggesting there is any villain in the piece at all. That is for the Board. I am trying to ask you the question - I am not saying there is any villain in the piece at this stage anyway, I am asking about the place of the doctor. The doctor may know that 25 tablets, 25 aspirin tablets will cost his patient less than 25 tablets of the cortisone derivative. If he doesn't know any more than that, what other function would you impose on the doctor to protect his unprotected consumer or patient?



1
2 MR. KIRK: I think, I am not sure
3 that I would impose any other responsibility on the
4 doctor. The recommendations that we have here are
5 rather interconnected recommendations. They deal
6 with a number of aspects of it, which we would hope
7 to give, might result in a lowering of drug prices.
8 When you ask, as I gather you are asking, what
9 special responsibilities we would put on the doctor
10 to ensure that the patient buys his drugs economically,
11 I am not sure except to the extent that the generic
12 description recommendation would assist in the
13 improvement of the position.

14 MR. FRAWLEY: That I quite agree that
15 is one of your suggestions, but if for some reason
16 the doctor, for convenience or whatever other reasons,
17 chooses to use the brand name method of prescribing,
18 I just put it to you whether or not you are asking
19 the doctor to go beyond his proper function, and that
20 is to diagnose the condition and prescribe the
21 adequate remedy and then stop there. I am wondering
22 what you think?

23 MR. KIRK: I don't think it is. I
24 would say that it is not certainly beyond the proper
25 function of a doctor under the circumstances of
26 prescribing drugs to interest himself in this if he
27 could manage it. I could certainly understand how
28 many doctors would have difficulty in managing it.

29 MR. FRAWLEY: If a doctor hands
30 this little piece of paper containing a prescription,



1 and he is dealing with a poor man, a person who is
2 unemployed shall we say, and he hands him a
3 prescription which he knows those 15 tablets are going
4 to cost him \$15.00, what could he do about it anyway?

5 MR. KIRK: The doctor do you mean?

6 MR. FRAWLEY: Yes, if he wants that
7 remedy for that condition for that patient?

8 MR. KIRK: Well, in so far as there
9 are alternatives in the purchase of drugs at economic
10 consequences, one at a higher and one at a lower price,
11 but satisfactory alternative drugs, I don't think it
12 is inconceivable, for example, that a doctor who was
13 in active practice might encourage a trained nursing
14 assistant that he had to interest herself a little
15 in what these drugs cost, and under some circumstances
16 to let the doctor know, if this is the kind of
17 question you are asking, just what might a doctor do
18 about it.

19 MR. FRAWLEY: He might say: "If
20 you go to an ordinary good druggist, who is conducting
21 his business under the private enterprise system, he
22 might pay so much, but if you convince the out-patient
23 department of one of the big hospitals to supply you
24 you would probably pay less". He might suggest that?

25 MR. KIRK: He might suggest that.

26 THE CHAIRMAN: Thank you Mr. Kirk.

27 MR. HANSARD: I wonder if it could
28 be indicated to us whether there are any more briefs
29 to be put in?
30



1 THE CHAIRMAN: I have no knowledge of
2 any more briefs to be put in here.

3 MR. HANSARD: At Ottawa?

4 THE CHAIRMAN: At Ottawa.

5 MR. HUME: Have you any knowledge of
6 any briefs that are to be put in in Halifax that we
7 might be provided with a copy of beforehand?

8 THE CHAIRMAN: I don't know of any
9 briefs in Halifax.

10 LIONEL BRADLEY PETT, sworn

11 THE CHAIRMAN: Your first name?

12 DR. PETT: Lionel Bradley Pett, sir.

13 DIRECT EXAMINATION BY MR. MACLEOD

14 MR. MACLEOD: You are a medical
15 doctor, Dr. Pett?

16 DR. PETT: I have two doctor's degrees.
17 I am a doctor of medicine and also a doctor of
18 philosophy in biochemistry.

19 MR. MACLEOD: By whom are you employed?

20 DR. PETT: By the Department of National
21 Health and Welfare.

22 MR. MACLEOD: In what capacity, doctor?

23 DR. PETT: If you would permit, Mr.
24 Chairman, I have a very short statement that I would
25 like to read here, which explains the exact position
26 that I occupy in the Department of National Health
27 and Welfare.

28 THE CHAIRMAN: That may save time.

29 DR. PETT: It is very short, but it may
30



1
2 just save a little time if I made clear the position
3 that I occupy. My title is Principal Medical Officer
4 for Research Development of the Department of National
5 Health and Welfare. The medical and health research,
6 and the knowledge of it which is available to the
7 research section, is described then in these two or
8 three paragraphs.

9 The Research Development Section is
10 assigned the following responsibilities:

11 (a) Scientific appraisal, in consultation
12 with medical research experts, of research projects
13 under the National Health Grants Program whereby
14 grants-in-aid of medical research are made through
15 provincial departments of health for research carried
16 out in universities, hospitals, and other places.

17 (b) Advising the department on research
18 policies.

19 (c) Maintenance of liaison with other
20 agencies making medical research grants or conducting
21 research, e.g. the Medical Research Council of Canada,
22 Defence Research Board, Department of Veterans' Affairs;
23 Voluntary Agencies such as the National Cancer
24 Institute, National Heart Foundation, Canadian
25 Arthritis and Rheumatism Society, and research
26 institutes such as the Connaught Medical Research
27 Laboratories, they are in Toronto, the Institute of
28 Microbiology and Hygiene, which is in Montreal, and
29 some other institutes.

30 Diseases and disabilities of special



1 interest in the National Health Grants Medical Research
2 Program are categorized here under four headings:

3 (a) Infectious diseases, including
4 all those commonly encountered in Canada, e.g.
5 tuberculosis, poliomyelitis, measles, etc., and unusual
6 infections, e.g. Asian influenza.

7 (b) Chronic diseases, or those requiring
8 prolonged treatment, mainly cardiovascular, cancer,
9 mental disorders, and rheumatic diseases.

10 (c) Disease and disability arising
11 from environmental conditions, including air and water
12 pollution, ionizing radiation and accidents.

13 (d) Other disease problems involving
14 genetics, maternal and paediatric conditions,
15 occupational hazards, etc.

16
17 The research projects which are
18 assisted by the National Health Grants range
19 widely over many aspects of medicine, but with special
20 emphasis on the areas as just mentioned.

21 During the current fiscal year, out
22 of 323 research projects assisted by the Department
23 of National Health and Welfare only 18 are in the
24 field of pharmacology and therapeutics, and none of
25 these 18 is concerned with the preparation of new
26 drugs. Funds for these research projects amount to
27 about \$195,000 this current fiscal year, or
28 approximately 6 per cent of the total for research
29 under the National Health Grants Program.

30 THE CHAIRMAN: That \$195,000 does that



1 refer to the 18 projects?

2 DR. PETT: Yes sir. I thought these
3 facts would be of interest to you. It is not really a
4 submission, but facts from our program.

5 None of these moneys is directed to the
6 drug industry nor is there otherwise any formal contact
7 with drug manufacturers under the Research Grants
8 Program.

9 I want to make clear that the Section
10 is not concerned in any direct way with the drug
11 industry.

12 Within the Department, research related
13 to drugs is almost entirely carried out in the Food
14 and Drugs Directorate.

15 You heard yesterday, sir, Dr. Morrell,
16 the Director, concerning the Food and Drugs Directorate
17 so I would not want to review that particular aspect
18 of the departmental research program.

19 That completes this small submission.

20 MR. MACLEOD: How long have you had
21 your present position, doctor?

22 DR. PETT: Almost two years.

23 MR. MACLEOD: Were you concerned in any
24 direct way with research prior to that time?

25 DR. PETT: I have been concerned with
26 research almost my whole professional life, which goes
27 back 31 years.

28 MR. MACLEOD: Have you had any
29 experience in research in private industry?
30



1
2 DR. PETT: No.

3 MR. MACLEOD: Are you familiar with
4 the research being carried on by commercial firms in
5 Canada?

6 DR. PETT: I have no personal contact.
7 I have never visited any of the drug manufacturers in
8 Canada.

9 MR. MACLEOD: But I have in mind
10 something like this, doctor, that you, according to
11 the information that you supplied, you approve research
12 for certain purposes?

13 DR. PETT: Yes.

14 MR. MACLEOD: And before approving
15 research for a certain purpose, would you check to see
16 if there was research in that field being carried on
17 by the commercial drug companies, or would you have
18 sufficient general knowledge of the field to know that?

19 DR. PETT: No, well, yes we would
20 check to find out if there was research in that field,
21 or whether it was an important subject for research,
22 whether it was a developmental program. We would not
23 have, and when I started with a no, I was referring
24 to the latter part of your question, we would not
25 have all the knowledge necessary to cover all the
26 fields of medicine or pharmacology, for this reason,
27 that we carry on consultations with experts in the
28 fields. We might and do consult appropriate people,
29 even employed by industry or in universities, or anywhere
30 else, as to the advisability of supporting a given



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1 research program.

2 MR. MACLEOD: What I was getting at
3 was this, whether the fact that you provide the
4 expenditure of money for research in a certain field
5 or certain area, means that nobody else in Canada is carrying
6 on
7 /that research, and you feel it is necessary and
8 desirable that it should be done?

9 DR. PETT: No sir, it does not mean
10 that. It is quite possible that research on the same
11 subject, or closely allied aspects of the same subject,
12 might be carried on several places in Canada at once.

13 I would like to elaborate on that
14 by explaining just to begin with from departmental
15 sources there are four different agencies supporting
16 research in the field of medicine, the Medical
17 Research Council, the Defence Research Board has a
18 medical research section, the Department of National
19 Health and Welfare of course, and the Department of
20 Veterans Affairs carries out a good deal of clinical
21 research throughout its own hospital system and
22 treatment services.
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2 There is a liaison maintained as
3 mentioned here, but all liaison can break down at
4 times, and if it breaks down, it has actually
5 happened that research is supported by the agencies
6 on identical problems. So that this could happen.

7 MR. MACLEOD: Is the intention of
8 the liaison that is maintained to prevent that
9 happening?

10 DR. PETT: Partly, yes, but not
11 entirely.

12 MR. MACLEOD: Do you follow in a
13 general way the work that has been done by commer-
14 cial drug firms?

15 DR. PETT: Only to a very limited
16 extent. The projects, the interests we have are
17 not only in the production of new products. I
18 have indicated that in my statement. We are
19 interested in improving the health services for
20 Canadian people. This involves, as far as we are
21 concerned, not very much concerned with new pro-
22 ducts so much as the proper use of products that
23 are available, the testing of their effects on
24 humans, their safety, toxicology, other aspects
25 of their use, and as a result of this our contacts
26 are much more with universities and hospitals who
27 are carrying out clinical investigation. Occasio-
28 nally we find that they are obtaining drugs from
29 a particular manufacturer, but our contacts are
30 not so much with the manufacturers themselves,



1
2 unless they happen to publish results in the regular
3 journals.

4 MR. MACLEOD: Can you make any compari-
5 son between the research carried out in Canada by
6 the commercial drug firms and by Government-aided
7 bodies, universities and the like?

8 DR. PETT: Well, in this particular
9 field of what we would call pharmacology and thera-
10 peutics it covers, I guess, a good deal of this.
11 I could make only a very general statement and
12 impression, because I know of only one overall
13 summary attempt of medical research in Canada, a
14 co-operative effort of the governmental agencies
15 I have referred to. I am very familiar with that,
16 because I worked closely with my colleagues in
17 preparing that document.

18 MR. MACLEOD: Is that the Farquharson
19 Report?

20 DR. PETT: No. I am referring to an
21 annual report, what is called a reference list of
22 medical projects in Canada. Certainly from that
23 report my impression would be that governmental
24 support of research is much greater than anything
25 reported from industry. However, I do have to say
26 that this reference list does not even pretend to
27 cover everything that is going on in medical
28 research in Canada. So far there is no agency that
29 I know of that has accepted the responsibility of
30 trying to keep track of all research in Canada,



1
2 medical research.

3 MR. MACLEOD: Do you know of certain
4 recommendations along those lines which were made
5 by the so-called Farquharson Commission or Committee?

6 DR. PETT: Yes. The Farquharson
7 Committee did recommend that there should be not
8 only continued and tighter, close liaison among
9 Government agencies but there should be increased
10 liaison between voluntary agencies, that it should
11 be extended to cover all kinds of medical research
12 going on in Canada and in allied fields, because it
13 goes through all departments of universities, and
14 so on. However, this was only, as I recall it, a
15 recommendation for increased liaison, it didn't
16 call for any specific report.

17 MR. MACLEOD: Do you know of any
18 steps that have been taken to implement the recommen-
19 dations of the Farquharson Report?

20 DR. PETT: Yes, sir. The most important
21 step of all was the establishment of the Medical
22 Research Council which had not existed before. That
23 was carried out in November, 1960.

24 MR. MACLEOD: And what functions will
25 this Council perform? The liaison you spoke of?

26 DR. PETT: I hesitate to speak for
27 the Medical Research Council, Mr. Chairman.

28 MR. MACLEOD: Let me phrase my ques-
29 tion another way. What functions was it contem-
30 plated in the Report that this Council should



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perform? What was the purpose of setting it up?

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DR. PETT: The Report itself, the

Farquharson Report, recommended that it should be set up; second, that there should be an increased amount of money made available for medical research in Canada, specifically to the Medical Research Council, that it should take over all the work of the medical division of the old National Research Council (that is an incidental administrative arrangement); that the various projects of the other governmental agencies should be continued and expanded in their normal way, and that the new Medical Research Council should explore - I am not sure of the words in the Report - explore the further development of medical research in Canada.

MR. MACLEOD: What is your own feeling, Doctor, as to the adequacy of the research that is being carried on in Canada now, that is medical research?

DR. PETT: I think it is most inadequate really, although there are various reasons for that.

MR. MACLEOD: Yes.

DR. PETT: That is generally over the whole field.

MR. MACLEOD: Did you tell me a few moments ago, speaking of research carried on in Canada only, that of the research carried on only a small proportion is carried on by commercial



1
2 drug firms?

3 DR. PETT: That is my impression, but
4 I have made very clear, I think, that I do not have
5 factual knowledge of the full extent of the research
6 of drug firms unless it becomes published in the
7 journals, which is perhaps at a late stage.

8 MR. MACLEOD: Isn't it generally
9 recognized that Ayherst, Frosst and Horner are
10 the three companies which carry on research to any
11 serious extent?

12 DR. PETT: I have certainly frequently
13 heard that said in medical meetings and other
14 places, yes.

15 THE CHAIRMAN: I understand, Dr. Pett,
16 that you are saying you have no personal knowledge
17 of the fact as to whether these three are the only
18 ones which are engaged in research in an appreciable
19 degree.

20 DR. PETT: That is correct.

21 THE CHAIRMAN: There may be others
22 that you do not know about.

23 DR. PETT: That is correct.

24 MR. MACLEOD: I understand you
25 approve grants to certain private societies,
26 private associations.

27 DR. PETT: Yes.

28 MR. MACLEOD: Does the fact that you
29 approve those grants mean that you feel those
30 private associations are performing an important



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function?

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DR. PETT: Yes, I would think so.

4

MR. MACLEOD: There is a necessity --

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DR. PETT: It is not so much of an

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estimate of the association as of the project

7

which they propose to carry out. It has to be

8

something which we feel is important to the health

9

of Canadians and that they are in a position to

10

carry out.

11

MR. MACLEOD: When we are greeted

12

on the radio or television with such slogans as

13

"Beat cancer with a check-up and a cheque", it

14

would appear it is necessary for this association

15

to go outside established funds available for

16

research.

17

DR. PETT: That is correct.

18

MR. MACLEOD: They have to go to the

19

public for it.

20

DR. PETT: That is correct.

21

MR. MACLEOD: Which means that there

22

isn't sufficient money available from either govern-

23

mental sources or commercial firms to carry on the

24

researches?

25

DR. PETT: I would certainly think

26

that when public subscription is made, that is

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when a citizen donates money to a private or volun-

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tary agency, they feel they are giving something

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extra that is needed to do the job that much better.

30

MR. MACLEOD: On page 1 of the so-called



1
2 Farquharson Report - I will read the full title for
3 the record. It is a Report to The Honourable Gordon
4 Churchill, Chairman, The Committee of the Privy
5 Council on Scientific and Industrial Research by The
6 Special Committee appointed to review extramural
7 support of medical research by the Government of
8 Canada. It is dated the 12th of November, 1959.
9 It is commonly referred to as the Farquharson Report.

10 On page 1 in the first paragraph
11 there are a number of discoveries as a result of
12 research made in Canada. Do you not recall any
13 of the details of any of those? The passage I am
14 referring to begins:

15 "The dramatic discovery of insulin
16 in 1921 focused attention on Canadian
17 medical research, stimulated the
18 ambitions of young people to enter
19 the field, and led the public to
20 expect our scientists to make major
21 contributions to medical science.
22 This expectation has been justified.
23 The full list of these can not be
24 given now, but it would include: the
25 isolation of hormones..."

26 and so on and so on. Are you familiar with the
27 particulars of any of those discoveries and where
28 and by whom they were made?

29 DR. PETT: I am familiar with a
30 number of them. I had the privilege of knowing



1
2 Dr. Banting in 1926, about five years after the
3 discovery referred to here, and from then on to his
4 death, and certainly have been familiar with the
5 research on insulin and diabetes since then.

6 MR. MACLEOD: The discovery of insulin
7 was --

8 DR. PETT: By Banting and Best.

9 MR. MACLEOD: As a result of research
10 at the University of Toronto?

11 DR. PETT: Yes.

12 MR. MACLEOD: Would you continue,
13 please?

14 DR. PETT: Well, the isolation of
15 hormones from the parathyroid gland is associated
16 with the name of Dr. Collip. He also did some
17 work on the pituitary body and the placenta. The
18 introduction and use of anticoagulants has been
19 associated with a number of people, and I can think
20 of Professor Ford Connel at Queen's University and
21 some of his associates. MR. MACLEOD: My point was
22 if you could give us the information whether any
23 of these discoveries referred to here were the
24 result of work carried out at universities or
25 hospitals or whether they were the result of work
26 carried out by commercial drug firms.

27 DR. PETT: The work I am familiar
28 with was done in teaching hospitals, that means
29 hospitals associated with universities and there-
30 fore closely allied rather than with drug firms.



1
2 But I would not like to suggest that there isn't an
3 aspect which was necessary for the research here
4 that would come only from a drug firm. I am refer-
5 ring specifically to the ability of a drug manufac-
6 turer, used in a general sense, to prepare a product
7 such as a hormone which has to be extracted from
8 animal tissue on a fairly large scale. This cannot
9 generally be done in a university lab, it requires
10 larger facilities, and I shouldn't be surprised to
11 find, delving into these, that there was involved
12 in some of them, certainly in the hormones, such
13 assistance by drug firms.

14 MR. MACLEOD: Is there anything
15 further you wish to say as you go down the list?

16 DR. PETT: You asked if I am familiar
17 with the people doing this research?

18 MR. MACLEOD: Yes.

19 DR. PETT: So far I haven't found any
20 that I am not familiar with somebody, but maybe I
21 will find as we go down the list. I could name
22 people who have and are doing right now in Canada
23 outstanding work in these fields, particularly in
24 the use of procedures.

25 You will notice the next one is the
26 use of refrigeration in major surgery. It was
27 the Department of National Health and Welfare, oh,
28 eight or nine years ago that pioneered in Canada
29 the financial support of people to permit this
30 major advance, heart surgery and that sort of thing,



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in Canada. I don't think it involved any new drugs,
so perhaps we may go on to another one.

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1 DR. PETT: The identification of the
2 sex chromosome - I do not think that is very original
3 in Canada. The preparation of an artificial medium
4 for the cultivation of mammalian cells - that is done
5 right within the Department of National Health and
6 Welfare. "Discovery of the function of certain
7 areas in the cerebral cortex"; which is in the field
8 of mental disorders and Canadian research in this
9 field has been outstanding and is recognized around
10 the world. "Surgical treatment of epilepsy -"
11 that is certainly not a drug matter in this context.
12 "The discovery of the nature of certain diseases
13 of the liver and knowledge of the variations in
14 metabolism in health and disease - well, most of
15 these discoveries -- perhaps this is not what you
16 are asking but I would like to say most of these
17 discoveries do not involve anything very much in the
18 way of drug manufacturing.

19 MR. MACLEOD: Well, in your opinion,
20 as a man with some knowledge of the field, is there
21 a difference between the type of research carried out
22 by commercial drug firms on the one hand and by
23 teaching hospitals and such institutions on the other?
24 Is one more basic than the other? Is one more
25 directed towards immediate results or anything like
26 that?

27 DR. PETT: I think it might be
28 answered, Mr. Chairman, by me defining "research"
29 before I answered. Better men than I have stumbled
30



1 on trying to define research. I prefer a very simple
2 definition personally and one that I have defended
3 before the Royal Society and other scientific bodies;
4 namely that "research is the systematic attempt to
5 add to knowledge". It has to be systematic to be
6 scientific and you have to have a plan and method,
7 you see. Its objective is to add to knowledge. You
8 can get much more elaborate definitions but I like
9 this one personally.

10 THE CHAIRMAN: It probably covers the
11 field.

12 DR. PETT: It is rather broad.

13 It does, however - and this is in
14 answer to your question, sir - tend to eliminate a
15 number of things that are often called research. If
16 you merely make a new chemical, have you in fact added
17 to knowledge?

18 Now, I would be inclined to say "no".
19 If you studied what that chemical does systematically
20 to humans, what its effect on diseases might be and
21 that sort of thing, this becomes research. You see
22 you can add to knowledge that was not previously known.

23 But I think that this other aspect,
24 which is quite commonly called in industry with which I
25 am familiar, not only primarily the chemical industry,
26 is called development or sometimes developmental
27 research; really has to be separated off from true
28 research because developmental work does not really
29 add to knowledge. It adds maybe more names and compounds
30



1 but it doesn't really add to knowledge.

2 THE CHAIRMAN: It might add to the uses
3 for the material.

4 DR. PETT: It might ultimately, yes sir.

5 THE CHAIRMAN: Would that justify the
6 term "research" if directed towards providing new and
7 better uses?

8 DR. PETT: I think that if in the long
9 run it has a usefulness then it probably justifies the
10 term "research" and I notice the Dominion Bureau of
11 Statistics, which has a very elaborate definition of
12 research, began just last year to publish a review
13 of research expenditures in Canada and they have
14 combined those two concepts of research, as I defined,
15 plus the development or developmental work and they
16 hyphenated them. They called it research-development,
17 not in the sense my own section is in the National
18 Health and Welfare but rather it combined aspects and
19 lumped them together in fact in their statistical
20 reports.

21 So their advisors for some reason must
22 have taken the view that you are that also contributes
23 to research so they won't try to draw a line between
24 them.

25 THE CHAIRMAN: I was merely asking you
26 if you would include it.

27 DR. PETT: I like to define them
28 separately. I don't mind hyphenating the two words.
29 I talk about research-development with a hyphen.
30



1
2 MR. MACLEOD: Yes. Now, having
3 defined research, would you care to express an opinion
4 on the question I originally asked you about whether
5 there was a difference in the type of research carried
6 on in teaching hospitals and such places as compared
7 with drug firms.

8 DR. PETT: Yes, I think there is a
9 very great difference. All the research I know of in
10 drug firms is concerned primarily with the production
11 of some new or different product which may or may not
12 at that stage be needed for the treatment of any
13 particular health problem at the time; whereas in
14 universities and teaching hospitals they are concerned
15 with a problem.

16 They have patients that have to be
17 treated and they want to understand as fully as possible
18 the best way of treating them, whether it is with an
19 old familiar drug or a new one so they are concerned
20 with quite a different aspect of the subject.

21 MR. MACLEOD: In your experience, is
22 there close liaison in the sense of exchange of
23 information and so on between research carried on by
24 commercial drug firms and the research carried on in
25 the hospitals or such places?

26 DR. PETT: I have very little personal
27 knowledge of such liaison. I do know of a few cases
28 in which the drug firms have in fact approached an
29 outstanding investigator, either in a hospital or
30 a university, and provided him - I don't know -



1 perhaps with funds; perhaps with samples of a new
2 product for study as to its use or its toxicology
3 or something of that sort. I know of a few cases of
4 this personally but I really could not generalize.

5 MR. MACLEOD: Are you saying you are
6 not sufficiently familiar with the field?

7 DR. PETT: I am not sufficiently
8 familiar with the practices of the drug manufacturers
9 in this respect to answer.

10 MR. MACLEOD: How does the extent of
11 research carried on in Canada compare with the research
12 carried in other countries? Can you express an opinion
13 on that? I am directing my attention to medical
14 research.

15 DR. PETT: I feel that the best recent
16 review of this is in this book, sir, the Farquharson
17 Report, which has already been referred to. There
18 are graphs, tables and other things comparing the
19 medical research in Canada with that in the United
20 Kingdom and in Sweden, just to pick two, that they
21 selected for various reasons and Canada lags far behind
22 both the United Kingdom and Sweden; whether you
23 calculate it in absolute dollars or as a percentage
24 of the Gross National Product or in some other ways -
25 the basis of that calculation.

26 THE CHAIRMAN: Just to get that clear.
27 You are referring to the total expenditures on research
28 in these countries or the governmental share of it?

29 DR. PETT: It would be the total
30



1 expenditures on medical research in so far as it is
2 available and known. Now, there is always this
3 limitation that you may not know everything that is
4 going on.

5 THE CHAIRMAN: The total expenditures
6 by anybody and everybody.

7 DR. PETT: Any available agency, source
8 of funds, so far as is known. Governmental, I think,
9 was primarily concerned in this report but they did
10 try to get the total picture.

11 MR. MACLEOD: Are the chief centres
12 of research in the medical field the teaching hospitals
13 and such places as Connaught Laboratories and the
14 Institute of Microbiology in Montreal.

15 DR. PETT: Well, the universities
16 themselves - the university departments themselves
17 do a great deal of medical research and they may or
18 may not be working in and with the teaching hospitals.
19 Those can be quite separate from that. I would say
20 first of all for medical research, all of the
21 medical faculties, and there are 12 in Canada right
22 across the country, are at least potential sources of
23 medical research and I think everyone of them has
24 medical research going on.

25 Then affiliated with them, certain
26 departments in hospitals. Then you also have quite
27 independent research in hospitals where you get an
28 investigator who wants to carry it out and then you
29 have these separate institutions which you have
30



1 mentioned.

2 MR. MACLEOD: Are the two I have
3 mentioned the most important in Canada of that type?

4 DR. PETT: Yes, I think so.

5 Perhaps I am neglecting to mention
6 here there is the Banting and the Best Medical Research
7 Institute and also the Charles H. Best Institute in
8 Toronto but these are so closely affiliated with
9 the university that I think I am perhaps neglecting
10 them just a trifle. They do outstanding work.

11 MR. MACLEOD: Is the nature of the
12 exchange of scientific knowledge such that Canada gets
13 the benefit of research done in any part of the world?
14 If progress is made on a disease in Sweden or
15 Switzerland or the United States, does the knowledge
16 come to Canada?

17 DR. PETT: I think it comes pretty
18 rapidly; perhaps less rapidly from behind the Iron
19 Curtain. Even from there there is a constant, I might
20 say, tremendous flow of information comes into Canada
21 from all over the world.

22 MR. MACLEOD: Are you able to say
23 anything about drugs in that connection? When a new
24 drug is developed in some other country, does it
25 normally become available in Canada within a reasonable
26 time?

27 DR. PETT: I have no knowledge of
28 this in my personal position. As a physician, not
29 in practice at the moment, sir, I can say we are liable
30



1 to read of drugs in other countries before they are
2 available in Canada, but just how long a gap there is,
3 I don't know.
4

5 MR. MACLEOD: In the normal course
6 of events they do come eventually.

7 DR. PETT: They do come eventually.

8 MR. MACLEOD: While there may be some
9 time lag, normal experience is that Canada receives
10 the benefit of any new product developed anywhere in
11 the world?

12 DR. PETT: I would think so.

13 MR. MACLEOD: I think those are all
14 the questions I have, sir.

15 THE CHAIRMAN: Just one question
16 arising out of the last question that Mr. MacLeod
17 asked. Perhaps you cannot answer this either. It
18 occurred to me this might be the situation that
19 sometimes a product that is developed overseas, we
20 will say, is confronted with a shortage of materials
21 from which it ^{is} made and therefore it is in very
22 short supply. It may take some considerable time
23 to develop supplies to the point where they can be
24 exported to other countries, such as Canada; whereas
25 in other instances there may not be shortages of
26 that kind. Would that effect the period of time
27 that might elapse?
28
29
30



1
2 DR. PETT: Yes, there is no question.

3 I do happen to have, although it isn't very perti-
4 nent, an observation. I have visited pharmaceutical
5 firms in quite a number of countries around the
6 world within the last few years. Perhaps, primarily
7 in Europe but also in some other countries, some
8 other areas, and there is no doubt that supply of
9 raw material or of basic materials, whatever you
10 want to call them, of certain chemicals or catalysts
11 or something else will affect the distribution.
12 That is plain, at least. Now, I can't say that I
13 have ever followed one of these right through in a
14 consecutive story, but I have seen, I have talked
15 to people who felt that a specific drug wouldn't
16 be available in Canada for a while because they
17 couldn't supply the product for one reason.

18 THE CHAIRMAN: That leads to another
19 question about which you may not feel you can give
20 us any definite answer. Do you feel, bearing in
21 mind that amount of variation, that new drugs do
22 become available to Canada as soon as might be
23 expected, the period of time may vary quite a bit
24 in one way or the other?

25 DR. PETT: I don't think, sir, I am
26 really qualified to generalize on that.

27 THE CHAIRMAN: I thought it might
28 be difficult. We would like to have the answer.

29 MR. MACLEOD: There is one further
30 point, if I may, Mr. Chairman. In your experience,



1
2 Doctor, have you run up against anything like this,
3 in certain countries there is a definite Government
4 policy that drugs are to be made at home, and that,
5 for example, Canadians have difficulty selling
6 their products in that country for that reason?
7 Have you any knowledge of any situation like that?

8 DR. PETT: I can't recall a specific
9 example of just this point, although...

10 MR. MACLEOD: Do you think...

11 DR. PETT: It seems possible that it
12 could arise.

13 MR. MACLEOD: You have no recollec-
14 tion of it arising in connection with vaccines in
15 England, for example?

16 DR. PETT: It is possible, I just
17 don't recall a specific occasion.

18 MR. MACLEOD: If you don't it is
19 all right. I just asked if you knew of it. If
20 you don't it is quite all right. That is all I
21 have.

22 THE CHAIRMAN: Are there any ques-
23 tions?

24 Thank you, Dr. Pett.

25 MR. MACLEOD: Thank you very much,
26 Doctor.

27 THE CHAIRMAN: Do we have anyone else?

28 MR. MACLEOD: That is all until 2
29 o'clock, sir.

30 THE CHAIRMAN: We will adjourn until



1
2 2 o'clock. We had another witness we expected
3 might be here. There is one witness at 2 o'clock
4 this afternoon. We will adjourn to 2 o'clock.

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6 --- Whereupon the hearing adjourned to 2 p.m.
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2 --- On resuming at 2 p.m.

3
4 DR. NATHAN SCHECTER, sworn

5 THE CHAIRMAN: I would like to say
6 that we appreciate your coming here and breaking
7 off important engagements for the purpose of being
8 present, and I hope we won't detain you too long.

9 DR. SCHECTER: Thank you.

10 DIRECT EXAMINATION BY MR. MACLEOD:

11 MR. MACLEOD: You are a medical doctor?

12 DR. SCHECTER: Yes.

13 MR. MACLEOD: And practising in the
14 City of Ottawa?

15 DR. SCHECTER: Yes.

16 MR. MACLEOD: And on the staff of the
17 Civic Hospital?

18 DR. SCHECTER: Yes.

19 MR. MACLEOD: Are you a member of the
20 Pharmacy Committee of the Civic Hospital?

21 DR. SCHECTER: Yes.

22 MR. MACLEOD: Did your Committee
23 prepare this book, the pharmacopoeia of the Ottawa
24 Civic Hospital?

25 DR. SCHECTER: Yes, the Chairman of
26 the Committee prepared the book.

27 MR. MACLEOD: I may want to ask you
28 a few questions about that later on. Before I ask
29 you about particular matters, you are the first
30 doctor who has appeared, and so that there may be



1
2 no confusion on the record --

3 THE CHAIRMAN: You might make it
4 clear the first practising doctor.

5 MR. MACLEOD: -- and so that there
6 may be no confusion on the record, I would like to
7 clear up some details with respect to prescription
8 drugs. There are certain drugs which by law may
9 only be sold under a doctor's prescription, is that
10 correct?

11 DR. SCHECTER: Yes, that is right.

12 MR. MACLEOD: Now, there are other
13 drugs in the case of which there is no legal require-
14 ment for prescription, but which are occasionally
15 sold under prescription?

16 DR. SCHECTER: That is right.

17 MR. MACLEOD: That is to say, you as
18 a doctor would occasionally write a prescription
19 for some drug for which no prescription is legally
20 necessary?

21 DR. SCHECTER: That is right.

22 MR. MACLEOD: And it is common prac-
23 tice in the medical profession?

24 DR. SCHECTER: Yes, in the case of
25 vitamin compounds, iron compounds, and various
26 stomach gastric remedies no prescription strictly
27 speaking is necessary, but some of the so-called
28 ethical pharmaceutical companies will not allow a
29 patient to buy over the counter, and prescriptions
30 are necessary in those cases.



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I don't really know just what the situation would be if a patient were given the name of some of these vitamins or iron preparations and told to go to the drugstore and ask the pharmacist for it. I don't know what the reaction would be.

MR. MACLEOD: But to get the situation clear, there are drugs for which no prescription is legally required, which are nevertheless sold on prescription?

DR. SCHECTER: That is right.

MR. MACLEOD: Could you estimate whether many prescriptions are written for such drugs?

DR. SCHECTER: Well, as I say, this would be primarily in the field of vitamins and iron compounds, various anti-acids, preparations of that kind. The names of those are sometimes difficult, but prescriptions are often written by the physician.

Perhaps it is only within recent months that it was realised that there was a prescription fee, a breakage fee, and all these other things that go along with the retail pricing. The doctor has not been too concerned with the cost of drugs up till recently, because he has been so busy trying to learn something about the hundreds of new drugs that come out every year.

MR. MACLEOD: Perhaps we could tackle that problem, Doctor. Is it a problem to the practising physician to keep up with the developments



1
2 in the drug field?

3 DR. SCHECTER: It is a tremendous
4 problem. In Dr. Walter Modell's article on drug
5 explosion, Clinical and Pharmaceutical Therapeutics,
6 of January 1961 number, he mentions that Dr. Barr,
7 five years ago, mentioned that in the last 25 years
8 there have been 140,000 medicaments that were not
9 present before 25 years ago. This coincides with
10 the time since my graduation. 140,000 new drugs.
11 An estimated 90% hadn't existed 25 years previous.
12 An estimated 75% have been introduced in the last
13 10 years. Some 14,000 new ones have been added during
14 the current year.

15 For example, in the Vade Mecum Inter-
16 national, that we receive each year, in 1959 there
17 were 13 pages of drugs, in 1960 there were 14½ pages
18 and in 1961 there were 16 pages. Each page had
19 approximately 250 new drugs, which would mean some-
20 thing in the neighbourhood of 1,400 drugs from 1960
21 to 61, within a year's period, and we are subjected
22 to a lot of advertising matter about these new
23 drugs, and try to keep abreast of what is going on.

24 MR. MACLEOD: Before you leave that,
25 you made reference to Dr. Modell. Is he a recog-
26 nized authority in the field?

27 DR. SCHECTER: Yes, Professor of
28 Pharmacology at the Cornell Medical Centre, the
29 editor of this journal.

30 MR. MACLEOD: The journal to which
you refer, is that a recognized journal in the



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field, highly regarded by doctors?

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DR. SCHECTER: Yes, it is considered the

4

top, Pharmacology and Therapeutics, in the field.

5

THE CHAIRMAN: What is the name of

6

that hardback book again for the purposes of the

7

record please?

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DR. SCHECTER: Vade Mecum International.

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1 MR. MACLEOD: Doctor, you have
2 mentioned the terrific increase in a number of drugs.
3 I would like you to tell the Commission your own
4 personal experience. Do you yourself find it hard to
5 keep up with the developments?

6 DR. SCHECTER: Yes, it is difficult.
7 In my position as Chairman of the Pharmacy Committee
8 and the idea of having to turn out a new edition of
9 this pharmacopoeia every two years, it is an extremely
10 difficult problem to try to keep it up to date, and
11 with this Vadenecum International we frequently
12 get supplements regarding new drugs to paste into the
13 pages of different company. So it is a very difficult
14 problem to keep pace with it and to ascertain
15 particularly the toxic effects of various drugs, which
16 is very important.

17 MR. MACLEOD: If a new drug comes on
18 the market tomorrow, what sources of information do
19 you have to find out about it?

20 DR. SCHECTER: Well, we try to find
21 out about it from journals such as Clinical
22 Pharmacology and Therapeutics. Very often the
23 manufacturers are ahead of the journals with their
24 literature, and for a time at least we are dependent
25 on their advertising matter for information.

26 MR. MACLEOD: Do you receive a large
27 volume of advertising, promotional and informative
28 material, from the manufacturers?

29 DR. SCHECTER: Yes, there is a great
30



1 deal of it.

2
3 MR. MACLEOD: Is the volume such that
4 you have difficulty in coping with it and reading it
5 all?

6 DR. SCHECTER: It is impossible to
7 read it all.

8 MR. MACLEOD: What happens to what
9 you can't read?

10 DR. SCHECTER: Discard it.

11 MR. MACLEOD: Can you give the Commission
12 any idea of the value of that literature to you as a
13 doctor?

14 DR. SCHECTER: Well, I think that
15 there are some of the companies who put out very
16 sensible, well-written documented articles on their
17 drugs. There are others - and one realizes it when
18 reading them - that probably these have been written
19 by the advertising departments rather than the medical
20 directors of the firm, because they are couched - the
21 same thing when you are buying soaps or detergents
22 or things like that; it is blatant advertising and
23 sentences taken out of context, and one cannot believe
24 that type of advertising. But there are some
25 companies who put out very valuable information.

26 MR. MACLEOD: That is what I was going
27 to ask, doctor. Do you find that certain companies
28 consistently - let me put it another way. Do you
29 find that that literature that you receive from X
30 company, say, can generally be relied on?



1 DR. SCHECTER: Yes. Those are saved
2 in certain companies. They send literature which I
3 save for reading at my leisure and so on, but other
4 companies we automatically discard, and very often
5 it doesn't even come to my desk.

6 MR. MACLEOD: You would tend to cull
7 out the information you regard as valuable and read it.

8 DR. SCHECTER: Yes. But I would say
9 we rely on our better medical journals for the real
10 information on drugs.

11 THE CHAIRMAN: Doctor, I was going to
12 ask you about that. In answer to the last question but
13 one, as you cannot possibly read all of the literature
14 you are inclined at least to read the literature from
15 the companies you think are dependable rather than the
16 others.

17 DR. SCHECTER: Yes.

18 THE CHAIRMAN: Unless you are called
19 upon to check up what someone has been doing.

20 DR. SCHECTER: Yes, that is the
21 situation.

22 THE CHAIRMAN: You have to select.

23 DR. SCHECTER: Yes, one has to select.

24 THE CHAIRMAN: Do you have to discard
25 the great majority that comes in?

26 DR. SCHECTER: Yes.

27 MR. MACLEOD: You spoke of receiving
28 information from the medical journals too?

29 DR. SCHECTER: Yes.
30



1 MR. MACLEOD: Are a number of these
2 medical journals published in the United States and
3 in England?

4 DR. SCHECTER: Yes.

5 MR. MACLEOD: Is it the situation,
6 then, that the Canadian market will not support a
7 wide variety of medical journals?

8 DR. SCHECTER: We have very few in
9 Canada.

10 MR. MACLEOD: The principal one being
11 the Canadian Medical Associates?

12 DR. SCHECTER: Yes.

13 MR. MACLEOD: And apart from that the
14 leading journals would come from sources outside of
15 Canada?

16 DR. SCHECTER: That is right.

17 MR. MACLEOD: Are you visited by
18 detail men, doctor?

19 DR. SCHECTER: Yes, we are.

20 THE CHAIRMAN: We might have on the
21 record what a detail man is, because unless you are
22 informed it doesn't mean very much.

23 MR. MACLEOD: By a detail man I mean
24 a man coming around representing a drug firm.

25 DR. SCHECTER: That is right.

26 MR. MACLEOD: Do you have such men
27 coming around to see you?

28 MR. SCHECTER: Yes, we have.

29 MR. MACLEOD: Is their job to sell you
30



1 drugs or to sell you on the merits of drugs?

2 DR. SCHECTER: They come around to
3 talk of the various products that their companies make
4 and answer any questions about some of their products,
5 if they have any. They try to promote the sale of
6 their company's products.

7 MR. MACLEOD: Are there a large number
8 of these coming around? Do they encroach on your time
9 or anything like that?

10 DR. SCHECTER: Yes, we have visits
11 every week from detail men.

12 MR. MACLEOD: Are you able to see the
13 detail men every time they call?

14 DR. SCHECTER: Not every time, no, and
15 we can only give them a brief period of time. And the
16 same applies there: there are some detail men are
17 much better informed about their products than others
18 and have some vital information and answers, or they
19 will get them.

20 MR. MACLEOD: There are certain detail
21 men who perform a real service for you?

22 DR. SCHECTER: Yes.

23 MR. MACLEOD: And I presume those are
24 the ones you will receive if you are pressed for time?

25 DR. SCHECTER: Yes.

26 THE CHAIRMAN: Do you know, doctor,
27 whether most of the detail men who are engaged in this
28 field have some pharmaceutical or medical training
29 background, or are they more generally described as
30



1
2 salesmen?

3 DR. SCHECTER: I think a good many of
4 them have had some pharmacological training, but
5 certainly there are some who have not had any
6 pharmacological training; they are salesmen, selling
7 some other products in the same sort of way.

8 THE CHAIRMAN: I think one of your
9 previous answers indicated that they were not trying
10 to sell the drug but to give you the idea that their
11 product is the best one to prescribe.

12 DR. SCHECTER: Yes. I think one
13 day last week a detail man came in and showed a graph
14 where their antibiotic was supposed to be the best,
15 and the next day another one came in and showed a
16 graph where their antibiotic was the best. That is
17 number one.

18 MR. MACLEOD: Are you familiar with
19 the publication called Medical Letter?

20 DR. SCHECTER: Yes.

21 MR. MACLEOD: Do you subscribe to it?

22 DR. SCHECTER: I subscribe to half
23 a dozen journals. We get it at the Ottawa Civic
24 Hospital Medical Library. It is available, as well
25 as many other medical journals, so I read it there.

26 MR. MACLEOD: Can you express any
27 opinion as to the value of the Medical Letter in
28 appraising doctors about new developments in the
29 drug field?

30 DR. SCHECTER: I think it attempts to



1 outline the studies on various drugs with dosages
2 and toxic reactions and whether it is of any value.
3 I think it is a valuable publication. There has been
4 some criticism of it in a Canadian Medical Associates
5 Journal. Apparently they have not enough staff
6 for the job they are trying to do. This is a very
7 difficult problem, to try to assess the real value of
8 all the new drugs coming out, because a great many
9 of them are duplications of those in existence or
10 just small chemical changes, like Dr. Modell says,
11 to horn in on the sale. So it is difficult for any
12 publication to keep up to date.

13 MR. MACLEOD: Apart from the Medical
14 Letter, do you know of any independent publication
15 that attempts just that thing, to keep the doctor
16 informed of all the developments and to give him
17 accurate and unbiased information about the drugs?

18 DR. SCHECTER: Well, there are other
19 publications, new and unofficial remedies, published
20 by U.S.P., Merck index, but there isn't one
21 publication that really covers the field. We find
22 this of value, certainly, but again by the time we
23 get it there are a lot of new drugs. It is with
24 the so-called new drugs we are having trouble, getting
25 adequate information.

26 MR. MACLEOD: That is what I was
27 trying to get clear, doctor. It is my understanding
28 that the function of the Medical Letter is to give
29 such information about new drugs.
30



1
2 DR. SCHECTER: Yes.

3 MR. MACLEOD: And I was wondering if
4 there was any similar publication trying to do that
5 thing?

6 DR. SCHECTER: No, not here, not to
7 my knowledge, in Canada.

8 MR. MACLEOD: Now, I asked you a
9 moment ago about the Pharmacopoeia of the Ottawa
10 Civic Hospital. Perhaps you would look at - this
11 appears to be one of the early pages which is in
12 there, but it is headed "Purposes and Functions of
13 the Pharmacy Committee". Would you take them one
14 by one. What is the first one?

15 DR. SCHECTER: "To serve as an
16 advisory group to the hospital medical staff and the
17 hospital pharmacist on matters pertaining to the
18 choice of drugs."

19 MR. MACLEOD: Does the medical staff
20 need advice on the choice of drugs?

21 DR. SCHECTER: Yes, we are often
22 asked questions about new drugs and whether they
23 should be stocked in the hospital, and we have been
24 sending around what we call a Newsletter in the
25 hospital with lists of drugs. We have been trying
26 at our hospital to introduce the ordering of drugs
27 by generic names.

28 MR. MACLEOD: May I just stop you
29 there, doctor and get that clear. When you say "In
30 our hospital ordering drugs by generic names", does



1 that mean the hospital ordering them or the individual
2 doctor?

3 DR. SCHECTER: The doctor ordering them.

4 MR. MACLEOD: The individual doctor
5 ordering them by generic names?

6 DR. SCHECTER: Yes. And we issue the
7 Newsletter with some newer drugs coming out with
8 toxic reactions particularly, cautioning the doctors
9 about them.

10 MR. MACLEOD: What is the next one?

11 DR. SCHECTER: "To add to and delete
12 from the list of drugs accepted for use in the
13 hospital".

14 MR. MACLEOD: Do you find it
15 desirable to limit the number of drugs that should be
16 used in the hospital?

17 DR. SCHECTER: Yes.

18 MR. MACLEOD: For what reason, doctor?

19 DR. SCHECTER: Well, there are somewhere
20 in the neighbourhood of 67 tranquilizers and 35
21 antihistamines and many different types of antibiotics.
22 A lot of them are duplication; there isn't space
23 to keep all these drugs.

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DR. SCHECTER: We try to limit to
some extent the number of drugs that are in the
hospital now.

MR. MACLEOD: What is the next,
Doctor?

DR. SCHECTER: To prevent unnecessary
duplication of the stock of some basic drug and
its preparation.

MR. MACLEOD: That is pretty much the
same.

DR. SCHECTER: Yes. To make recommen-
dations concerning drugs to be stocked on the
emergency unit floors and by other services.

MR. MACLEOD: I suppose that is an
internal economy?

DR. SCHECTER: Yes. On various
floors different types of drugs are required, on
the obstetrical floors and pediatric floors.

To affiliate clinically the depart-
ment concerning new drugs or preparations requested
for use in the hospital.

MR. MACLEOD: That leads up to your
newsletter about which you told us.

DR. SCHECTER: To which?

MR. MACLEOD: To your newsletter
about which you have told us.

DR. SCHECTER: Yes. So if a drug
company is introducing something new, if it is
mainly for use by the surgical staff, I discuss the



1
2 question with the staff of surgeons and their know-
3 ledge of it and also with the pediatric division.

4 MR. MACLEOD: Yes.

5 DR. SCHECTER: We try to find out as
6 much as we can about the drug before its introduc-
7 tion.

8 MR. MACLEOD: Do you find that is of
9 assistance to the staff to make that study and make
10 that information available to doctors?

11 DR. SCHECTER: Yes. We have had
12 favourable comments about it thus far.

13 MR. MACLEOD: Is there anything
14 further?

15 DR. SCHECTER: Finally to develop
16 formulary or drug list of accepted drugs for use
17 in the hospital. That is the purpose of this and
18 it is prepared with the generic names with, in
19 certain cases, the brand names after it; but it is
20 our desire to have the staff order by the generic
21 name.

22 MR. MACLEOD: Perhaps you would say
23 something of your reasons for that, Doctor, if
24 you would, the generic and brand name question.

25 DR. SCHECTER: I think perhaps to
26 explain it, first of all, a drug has a chemical
27 name. This may be a very long, lengthy, very
28 wordy affair that only a chemist would understand.
29 Then there is the generic name which is easier to
30 understand and write. For example meprobamate, a



1
2 tranquilizer, is the generic name for a host of
3 tranquilizers such as Frenquil, Equanil and Miltown
4 and so on. If we have meprobamate as a generic name,
5 we do not have to print 67 different other names.
6 We might after meprobamate mention a few trade
7 names, those being either the earliest ones that
8 came into the picture or where we consider the pharma-
9 ceutical company the most reliable in its field.

10 THE CHAIRMAN: Did you mean when you
11 referred to meprobamate and then gave the other
12 names, is that the trade name of it?

13 DR. SCHECTER: Yes.

14 THE CHAIRMAN: That they are practi-
15 cally the same?

16 DR. SCHECTER: They are identical.

17 THE CHAIRMAN: Those drugs with the
18 several different names are identical?

19 DR. SCHECTER: They are identical,
20 yes.

21 The thing is that if one learns the
22 generic name for drugs one does not have to learn
23 all the duplications, all the various brand name
24 products.

25 MR. MACLEOD: In your opinion would
26 it be desirable for doctors to use the generic
27 names generally in prescribing?

28 DR. SCHECTER: Yes, I think that it
29 would be desirable for the reasons that I mentioned,
30 except that we are somewhat concerned about the



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2 quality of a drug that would be dispensed in certain
3 cases with the generic name.

4 There are generic name companies and
5 we have not as yet had a definite indication from
6 the Food and Drug Department that they are all
7 qualitywise in the ethical field. There is some
8 fear on the part of the physician that the quality
9 of the drug may not be up to par and so we hesitate
10 using generic names too widely as yet.

11 I think that when and if the Food and
12 Drug Department say they are all right to have the
13 proper quality controls and so on, we will have no
14 hesitation in ordering generic name drugs.

15 MR. MACLEOD: You order drugs or
16 prescribed drugs by the generic names in the
17 hospital. They would normally be filled from the
18 hospital pharmacy.

19 DR. SCHECTER: Yes.

20 MR. MACLEOD: So you have in that
21 case a safeguard.

22 DR. SCHECTER: Yes.

23 MR. MACLEOD: You would assume that
24 the purchases for the hospital are all of satis-
25 factory quality.

26 DR. SCHECTER: That is right.

27 MR. MACLEOD: As a matter of interest
28 do you prescribe outside of the hospital for
29 private patients?

30 DR. SCHECTER: Yes.



1
2 MR. MACLEOD: What names do you use
3 there?

4 DR. SCHECTER: I use the generic
5 names fairly frequently but as I say in cases where
6 I am not sure about the quality I use the brand
7 name product. I am not saying that generic name
8 companies are not good but we are still somewhat
9 hesitant about ordering by generic names exclusively.

10 It is interesting that in the London
11 Economist, May 20th 1961 issue in an article on
12 drug prices -- of course, the situation in the
13 United Kingdom is different than here. There the
14 Government pays for all the drugs but they are very
15 concerned that their hospitals in the National
16 Health Service are spending about one million pounds
17 a year, one-fourteenth of their total drug bill, on
18 three fairly new drugs, two of them antibiotics and
19 the third a diuretic.

20 "Recently manufacturers, many in
21 Italy, have been offering to supply
22 hospitals with these drugs at
23 prices a third below those charged
24 by the subsidiaries of United States
25 companies that manufacture in
26 Britain.

27 But the Italian companies have not
28 taken licences from the American
29 inventors of the drugs, nor do they
30 pay them royalties".



1
2 I will not read it all but it points
3 out the fact that they are having difficulties
4 over there and just what they will do about it, we
5 don't know; but according to the last statement of
6 that article the Minister was going to -- Mr. Powell
7 felt he could save 350,000 pounds a year by ordering
8 those three drugs from Italy. Whether he will do
9 so, I don't know.

10 In the last issue of the Canadian
11 Medical Association Journal, again referring to
12 the National Health Service in Great Britain they
13 say: "The amount paid out on drugs has caused some
14 agitation in many circles, and to the end of econo-
15 mically prescribing, there exists a considerable
16 official team to give the doctor advice and criti-
17 cism".

18 What they have been trying to do is
19 send out circulars called prescribers' notes to
20 the doctors listing the cost of the various drugs.
21 The first issue appeared in early April. It is
22 issued every two months; with the idea of informing
23 the doctors about the cost of various drugs but
24 not telling them what drugs to order.

25 MR. MACLEOD: I do not want to put
26 you on the spot, Doctor. Are you yourself fairly
27 familiar with the prices the patients will have
28 to pay for drugs that are prescribed, or is it
29 possible for you to keep up with that information?

30 DR. SCHECTER: Well, actually I



1
2 think perhaps I have interested myself in the costs
3 of drugs to patients during the last couple of
4 years, with also checking prices of the same drugs,
5 the generic and the brand names, and there, of
6 course, is a big discrepancy between the two.

7 MR. MACLEOD: The brand name is
8 higher.

9 DR. SCHECTER: The brand name is
10 always higher.

11 MR. MACLEOD: That covers the personal
12 situation, as you have explained, with a special
13 interest in this field. Is it your opinion that
14 doctors generally and doctors in general practice
15 would know the prices of the drugs which they pres-
16 cribe; the cost of prescribing different drugs.

17 DR. SCHECTER: Probably not, unless
18 they were directly connected in some way with it;
19 although I think since the publicity about it
20 more and more of the doctors have familiarized
21 themselves with the costs.

22 It is difficult to know the cost of
23 all the drugs but I think that we are much more
24 familiar with it now, as a result of the publicity,
25 than we used to be.

26 MR. MACLEOD: Just going back to
27 something you said a few moments ago that you did
28 in your own private practice; apart from your
29 prescriptions that are filled at the hospital, you
30 do prescribe under the generic name in certain



1
2 cases. Do you find that the products which your
3 patients received were satisfactory?

4 DR. SCHECTER: Yes. I have had no
5 reason to feel that the drugs obtained were inferior.
6 I don't know whether the drug that was dispensed
7 by the druggist was from outside the country or
8 made in Canada or - what I mean, a foreign country
9 like Italy, but they were quite satisfactory.

10 MR. MACLEOD: Quite satisfactory.
11 Now, what do you feel, Doctor, about the number
12 and variety of dosage forms and duplications to
13 some extent at least of drugs that are on the
14 market?

15 DR. SCHECTER: Of course, there is too
16 many of the same type of drug; each company claims
17 that theirs is the best. Obviously that cannot be,
18 so that we have to select the drug we are going to
19 use in individual cases. Certainly there is very
20 much duplication, minor changes and I think that
21 there has been too, too rapid a spread of these
22 drugs without proper evaluation. I think if there
23 are less of them coming out, giving us more chance
24 to evaluate them and so on, it would be much better.

25 They say we now have almost more
26 drugs than we have diseases for them.

27 MR. MACLEOD: Being the type of
28 doctor that you are, would you endorse the views
29 expressed by Dr. Modell in the article to which
30 you referred?



DR. SCHECTER: Definitely
MR. MACLEOD: Did you read in the

Canadian Medical Association Journal an article that
is referred to as an appendix 2 in the, what we have
been calling the blue book here, that is Doctors,
Drugs and Drug Promotion.

DR. SCHECTER: Yes sir.

MR. MACLEOD: You read that in the
Canadian Medical Journal?

DR. SCHECTER: I read it quite a
while ago. As a matter of fact it was an article I
analysed for one of our meetings.

MR. MACLEOD: Would you agree with
the views expressed by the authors of that article?

DR. SCHECTER: Completely.

MR. MACLEOD: Doctor, those are the
only questions I have to ask you. If there is
anything on this subject that you want to say, that
you feel would be helpful to the Commission, go ahead
and say it.

DR. SCHECTER: There were just a
few things occurred to me, why the Canadian Patent
Act in the Act allows a company to exercise a
patent for a period of 17 years? Why that length
of time, the difficulties in compulsory licensing,
why we have sales tax here? They haven't got one
in the United States. These things tend to keep
the price of drugs elevated. That is about all, I
guess.

THE CHAIRMAN: I was going to ask



1 one simple little question. It is simple if you can
2 answer it. If not it is another matter. Does your
3 experience enable you to say whether doctors
4 generally if they find a patient has a condition for
5 which two or more drugs may be approximately equal
6 in their treatment value, judge between them pay some
7 attention to the economic situation, the cost? Can
8 you answer that sort of question?

9 DR. SCHECTER: Do we pay attention?

10 THE CHAIRMAN: Are doctors generally in
11 a position that they can make a decision with that in
12 mind generally?

13 DR. SCHECTER: Not generally, no. We
14 don't know enough about drug costs and there is some
15 variation in retail druggist charges from druggist
16 to druggist.

17 THE CHAIRMAN: Do the detail men who
18 come to your office describing the drugs give you any
19 indication what the retail price might be?

20 DR. SCHECTER: Yes, they often will
21 quote the price. We will ask them about price of
22 a certain article.

23 THE CHAIRMAN: This literature which
24 comes with it, promotion literature, promotion content,
25 that sort of thing?

26 DR. SCHECTER: No, they don't have
27 drug prices on.

28 THE CHAIRMAN: So far as the advertising
29 promotional matter is concerned you only get a fragment
30



1 of that information?

2 DR. SCHECTER: Yes.

3 THE CHAIRMAN: Of what you need for
4 good judgment.

5 DR. SCHECTER: And the manufacturers
6 price and the retail pharmacist price can be quite
7 different.

8 THE CHAIRMAN: Oh yes, that is true.
9 That is true.

10 DR. SCHECTER: So that doesn't give
11 us a final answer.

12 MR. BUCHANAN: May I pose a few
13 questions to Dr. Schechter?

14 THE CHAIRMAN: Yes.

15 MR. BUCHANAN: In one of the briefs
16 it was pointed out - there is a quote:

17 "There can be no doubt that
18 the high level of these
19 expenditures by the Canadian
20 manufacturers amounting on
21 the average to 25 per cent
22 and in some cases 40 per cent
23 of the value of the net sales
24 are an important factor in
25 raising the prices of drugs".

26 It occurred to me when you were talking about detail
27 men, the number that come to see you - would you care
28 to make a statement as to whether or not you feel
29 that detail men generally, or representatives as we
30



1 call them might be taken off the road, as we say, and
2 the companies would be far better to, perhaps, promote
3 their products in another way?

4 DR. SCHECTER: As I said we welcome
5 some of the detail men because they do discuss some
6 of the newer products very intelligently and are
7 helpful. I think they serve a definite purpose, but
8 we do find there are too many.

9 MR. BUCHANAN: We are most interested
10 in that because this promotion includes your sales
11 personnel plus your advertising material and so on.
12 It is a big factor in our cost of doing business.

13 DR. SCHECTER: Yes.

14 MR. BUCHANAN: Coming down to the
15 literature, I understand, and I know you are bombarded
16 with great masses of it. What percentage would you
17 say, Dr. Schechter, perhaps is wasted, 50, 75, 90 per
18 cent?

19 DR. SCHECTER: About 75 per cent.

20 MR. BUCHANAN: Only 25 per cent....

21 DR. SCHECTER: Seventy-five.

22 MR. BUCHANAN: I was going to say
23 only 25 per cent is used and is valuable?

24 DR. SCHECTER: Yes.

25 MR. BUCHANAN: One other question, on
26 this Pharmacy Committee that you have, you mentioned
27 one of their duties was the limiting of the number of
28 drugs, getting together to decide what drugs and how
29 many. I am wondering how you decide, is it on the basis
30



1 of, perhaps, price or a combination of price say and
2 the reliability of the company?

3 DR. SCHECTER: Well, I would say
4 first of all reliability of the company, and price is
5 a second consideration. Hospitals are in a different
6 position, as you know, because they buy their drugs
7 cheaper, no sales tax, 40 per cent or more off. We
8 are more concerned with the quality of the drug and
9 also whether it is going to reduplicate what we already
10 have or whether - if it is a very expensive drug then
11 the price structure comes in, and that is when we
12 discuss the drug with the surgeons or pediatricians
13 or obstreticians as to whether they think it is of
14 value to stock it. Also of course it is indication,
15 indications in hospital work.

16 MR. BUCHANAN: I see, but I wonder -
17 I didn't quite overhear the conversation with the
18 Chairman, price was brought up. But the salesmen,
19 I understood you to say, you did get some prices from
20 them.

21 DR. SCHECTER: Some of them do
22 supply prices, and very often we ask for them.

23 MR. BUCHANAN: Might this be carried
24 into the meeting, the price plus product, and this
25 be one of the considerations? I know you partially
26 answered that, in your consideration say of a price
27 list which you are going to, say, cut in half, does
28 the price come into it every time?

29 DR. SCHECTER: No.
30



1 MR. BUCHANAN: It wouldn't.

2 DR. SCHECTER: No.

3 MR. BUCHANAN: In other words in
4 many cases you wouldn't know the price?

5 DR. SCHECTER: No.

6 MR. BUCHANAN: The decision might be
7 made to keep a drug on the list and the price wouldn't
8 be considered?

9 DR. SCHECTER: That is right.

10 MR. BUCHANAN: Thank you, doctor.

11 MR. MACLEOD: I had one point I
12 omitted, if I might ask the doctor a question about it.
13 What have you to say about the practice of distributing
14 samples to doctors? Is it wasteful, is it helpful,
15 just what is the situation?

16 DR. SCHECTER: I think probably the
17 majority of it is wasteful. The majority of it is
18 not used for any useful purpose and again has to be
19 discarded. Some of it is of value in giving to
20 patients to help reduce their costs, especially in
21 the more expensive items. Recently we got a letter
22 from one of the Canadian firms stating that they
23 decided to stop issuing samples thereby effecting
24 a saving of - I have forgotten the exact amount,
25 possibly 30 per cent of the price of their drugs.

26 THE CHAIRMAN: What did you say?

27 DR. SCHECTER: It shows the effect...

28 THE CHAIRMAN: Did you say 30 per cent?

29 DR. SCHECTER: I am not absolutely
30



1 certain. I have the letter somewhere on file. It
2 was one of the Canadian pharmaceutical companies with
3 a vitamin preparation that is being widely used.

4 THE CHAIRMAN: Samples would be a very
5 heavy proportion of the total if that is so?

6 DR. SCHECTER: Well, a lot of samples
7 are distributed. I think it was quoted, I saw an
8 article.

9 When American Cyanamid first brought
10 out aureomycin they spent \$2 million on advertising.

11 THE CHAIRMAN: That is not samples?

12 DR. SCHECTER: That was samples.

13 MR. MACLEOD: That was samples.

14 THE CHAIRMAN: Samples amounting to
15 \$2 million.

16 MR. FRAWLEY: I hope they got a
17 special freight rate.

18 THE CHAIRMAN: You would be interested
19 in that.

20 MR. MACLEOD: As far as you personally
21 are concerned, doctor, could the drug companies cut
22 out samples and still enjoy your business to the same
23 extent they do now?

24 DR. SCHECTER: I think so. I believe
25 so.

26 MR. MACLEOD: It wouldn't affect the
27 products which you prescribe?

28 DR. SCHECTER: No.

29 MR. FRAWLEY: Dr. Schechter, first of
30



1 all let me say if I may be so presumptuous, I appreciate
2 very much your coming here as a practising physician
3 and head of the Pharmacological Committee of the Ottawa
4 Civic Hospital. I think evidence from people like
5 yourself should be very useful to this Commission.
6

7 I have just one or two questions I
8 would like to ask. If you would be good enough to
9 turn to page 47 of the Pharmacopoeia there. I am
10 using that as an example. Speaking for myself it helps
11 me to understand. You will see there under
12 hormones there are listed the drug, dexamethasone
13 and in brackets decadron and deronil. Is dexamethasone
14 the generic

15 DR. SCHECTER: It is the generic name.

16 MR. FRAWLEY: And decadron, I happen
17 to know is MSD and the deronil - I don't know what
18 that is. It is a brand of dexamethasone.

19 DR. SCHECTER: That is right.

20 MR. FRAWLEY: We have heard about
21 brand and generic names and going to dexamethasone,
22 as far as you are concerned I am just interested to
23 know for the people I represent whether it is going
24 to mean any difference in the price. Suppose my
25 physician wanted to give me decadron and instead of
26 decadron you prescribed dexamethasone, would it be
27 of any value to me in the drugstore when I am filling
28 my prescription, pricewise, I mean.

29 DR. SCHECTER: Probably not in this
30 particular item because these two companies are the



1
2 only ones I know making dexamethasone which is a form
3 or cortisone and pricewise - none of the generic
4 companies are making this as yet.

5 MR. FRAWLEY: None of the generic
6 companies?

7 DR. SCHECTER: No.

8 MR. FRAWLEY: What is the meaning of
9 that particular expression, the generic companies?

10 DR. SCHECTER: There are drug companies
11 who put out their drugs under generic names only, and
12 they have quite a few drugs but not all of them.

13 MR. FRAWLEY: In this, at least, in
14 this case it wouldn't matter a bit. That I would get
15 the same preparation. I would be just as well off.
16 To be intensely practical if I got the prescription
17 ...

18 DR. SCHECTER: Yes.

19 MR. FRAWLEY: He would give me MSD's
20 Decadron or some of the other man's Deronil.

21 DR. SCHECTER: That is right.

22 MR. FRAWLEY: It wouldn't be the
23 greatest help there if you had written dexamethasone?

24 DR. SCHECTER: That is right.

25 MR. FRAWLEY: You say in this particular
26 case.

27 DR. SCHECTER: That is right.

28 MR. FRAWLEY: Could we generalize at
29 all, doctor. To what extent does it or does it not
30 apply when we are dealing with generic names versus



1 brand names?

2
3 DR. SCHECTER: In this case you have
4 a license - a corisone product which is an expensive
5 item and requires special manufacturing privileges
6 and so on. There are not too many companies who make
7 these, this type of product, hormone products. This is
8 a special type of product.

9 Say I am thinking of antibiotics like
10 Chloramphenicol, which has brand name chloromycetin,
11 things like that, chlorpromazine, brand name
12 largactil - various products of that type, which
13 certainly ordered by generic name are considerably
14 cheaper.



1 MR. FRAWLEY: That is what I meant.
2 If you went in with a prescription written out in the
3 generic name of the drug, the druggist would fill it
4 with something that had no brand name on it?

5 DR. SCHECTER: Something which they
6 do, I did mention earlier, when I was discussing generic
7 names, that we are a bit hesitant because we haven't had
8 a record from the Food and Drug Department as to the
9 quality of some of these items.

10 MR. FRAWLEY: Yes.

11 MR. SCHECTER: But we have been
12 informed semi-officially anyway, that most of them
13 are all right and certainly not all brand name products
14 are top quality either. Clorophenol 250 milligram
15 capsules, the generic name company, \$17.00 a hundred.
16 Parke-Davis at the time this was taken, \$66.10 a hundred.
17 Meproamate, the generic name \$3.00 a hundred or less.
18 Miltown, anywhere from \$9.55 to \$13.50 per hundred.

19 MR. FRAWLEY: That is sufficient, unless
20 you want to put it on the record.

21 DR. SCHECTER: No, I don't, but you
22 asked about it and I was giving you the information.

23 MR. FRAWLEY: Does that mean that you
24 would find, in any given drugstore dealing with the
25 drugs you have just mentioned, some of the generic and
26 some of the brand names?

27 DR. SCHECTER: Yes.

28 MR. FRAWLEY: And you don't think there
29 would be any question about the druggist filling the
30



1 prescription that was written out with the generic
2 name of the drug, filling it out with a brand name,
3 knowing it was academic, knowing that he was giving
4 the patient what the doctor ordered?

5 DR. SCHECTER: He is legally right
6 in giving it, every brand name product has the generic
7 name written underneath it, so they are both the same.
8

9 MR. FRAWLEY: The patient would be
10 getting as good a product if the druggist filled it
11 with the brand name, but you say he would be paying
12 more?

13 DR. SCHECTER: That is according to the
14 figures. What the druggist would do about it, I don't
15 know.

16 MR. FRAWLEY: That is what I was thinking.
17 Sometimes the druggist might substitute, and it would
18 not be a very long substitution if he gave him a brand
19 name for what was prescribed under the generic name?

20 DR. SCHECTER: Yes, but our intent
21 would be defeated when we are trying to obtain the
22 drug cheaper for our patient.

23 MR. FRAWLEY: But perhaps the druggist,
24 not being able to fill the order as the prescription
25 was written, with a generic drug, fills the prescription
26 with the brand name, but because he hasn't the generic
27 drug gives it to him at the same price as the
28 generic drug. Have you ever found that?

29 DR. SCHECTER: Yes.

30 MR. FRAWLEY: And if he did that, then



1 the whole merit, as I may call it, would break down.
2 Would you expect that, or would you think that would
3 be an unlikely thing?

4 DR. SCHECTER: Extremely unlikely.

5 MR. FRAWLEY: You think that if he
6 didn't have the generic name, and the patient had a
7 prescription for a generic drug, he would say to the
8 patient:

9 "I have the brand name,
10 which is exactly the same,
11 but if you insist on the
12 generic drug, I will have
13 to send you somewhere else."

14 DR. SCHECTER: Oh, no, he can order it
15 from the wholesaler.

16 MR. FRAWLEY: That gets back to the
17 question. Sometimes prescriptions have to be filled
18 very quickly.

19 DR. SCHECTER: He would phone us and
20 tell us he does not have the generic product, and
21 would the same thing by another company be all right,
22 and if it was an emergency we would say: "Right, fine".

23 MR. FRAWLEY: As this inquiry
24 proceeds, and it has only been on yesterday and
25 today, we are hearing so much about generic versus
26 brand, and Mr. MacLeod's green book deals with it
27 also exhaustively, that I am sure the Commission cannot
28 know too much about this.

29 DR. SCHECTER: I think it is only a
30



1 small area though, as regards drug prices or costs.

2 MR. FRAWLEY: That is true. And
3 coming back to the steroids, as I selected for you to
4 discuss, you say it is only a small area, and this
5 business about generic versus brand isn't going to
6 develop into very much in that area?

7 DR. SCHECTER: No, there are a few
8 revisions to be made for new products that have come
9 in since this was printed.

10 MR. FRAWLEY: I was interested in
11 discussing with another witness whether or not the
12 doctor knows about the prices that his patient has
13 to pay for these expensive drugs, let us not say
14 excessively expensive, but expensive. Is it the
15 doctor's business, or considered to be the doctor's
16 business, to keep himself really well informed about
17 the price that has to be paid for these drugs?

18 DR. SCHECTER: No, I don't think it
19 is the doctor's business to. Naturally, we know
20 that if we prescribe dexamethasone, that price-wise
21 it has been as high as \$38.00 a hundred tablets and
22 that the price of it has come down recently somewhat
23 lower, probably \$32.00 per hundred. We know that there
24 are products available now, ordered by generic names,
25 which we didn't have before, that are equivalent in
26 strength and quality, which price-wise are much cheaper,
27 somewhere in the order of \$20.00 per hundred.

28 MR. FRAWLEY: As against 32?

29 DR. SCHECTER: Yes, and some of the
30



1 newer products are now \$14.00 and \$16.00 per hundred.

2 MR. FRAWLEY: Well, what you are
3 really saying is it is the business of the doctor
4 then, if he is thinking about the pay envelope of his
5 patient, that he should consider seriously prescribing
6 it in the generic name when he knows that the
7 immediate result is going to be a substantial difference
8 in the price which that marginal patient has to pay?

9 DR. SCHECTER: We do concern ourselves
10 with this hormone microzone, which patients require
11 a long time. We are not concerned about something which
12 will clear a situation up in about 16 capsules, which
13 a patient pays ten or twelve dollars for.

14 MR. FRAWLEY: There is only one
15 other thing that I wanted to ask. You told Mr. MacLeod
16 that there are certain drugs that could be, if the
17 patient knows the name of it, he should be able to
18 buy without a prescription because there is no
19 requirement or by law that it must only be dispensed
20 on prescription, but you said something which swept me,
21 that if he went in a drugstore and asked for it
22 without a prescription, you didn't quite know what
23 the reaction would be to supplying him. Was that on
24 the part of the druggist or the manufacturer?

25 DR. SCHECTER: On the part of the
26 druggist. As I say, some of the companies tell us
27 that they don't allow their drugs to be sold over the
28 counter. Mr. MacLeod asked if all drugs required
29 prescriptions, and I said that there are some,
30



1 vitamins and iron compounds, anti acid, don't require
2 prescriptions, but some of the companies will not allow
3 their drugs to be sold over the counter without
4 prescription.

5
6 MR. FRAWLEY: That is just the very
7 interesting phase of it. What right has a manufacturer,
8 if there is no legal prohibition against selling it
9 by name over the counter as you say, then by what rights
10 does the manufacturer tell the druggist how he can
11 sell this, by what procedure does the manufacturer
12 say to the druggist: "You must only sell this on
13 prescription", which sends the patient to a physician
14 for a prescription?

15 DR. SCHECTER: I don't know by what
16 right.

17 MR. FRAWLEY: But you know that is
18 going on?

19 DR. SCHECTER: Yes, I know it exists,
20 certainly.

21 THE CHAIRMAN: Would you say you don't
22 know whether it is a legal prohibition or not?

23 DR. SCHECTER: I think that a
24 manufacturing company can say: "Well, we don't sell
25 this drug over the counter". Tranquilizers for a while
26 were sold over the counter.

27 THE CHAIRMAN: That has been stopped?

28 DR. SCHECTER: That has been stopped, yes.

29 MR. FRAWLEY: I am not thinking of
30 tranquilizers, but things as common as anti acid



1 tablets, and you say some manufacturers say to the
2 druggist these must not be sold to just anybody who
3 comes in, but only when a doctor prescribes it?

4 DR. SCHECTER: That is right.

5 MR. FRAWLEY: That is your understanding?

6 DR. SCHECTER: That is my understanding.

7 MR. FRAWLEY: Although that is not
8 a drug which is by any provision or regulation in the
9 Food and Drug Act which requires prescription?

10 DR. SCHECTER: That is right.

11 MR. FRAWLEY: This decadron could only
12 be sold on prescription, and why?

13 DR. SCHECTER: Because it is a drug
14 that could do a great deal of harm if a patient took
15 it indiscriminately.

16 MR. FRAWLEY: But more than that, isn't
17 there a statutory prohibition against the sale of
18 decadron?

19 DR. SCHECTER: It is listed, yes.

20 MR. FRAWLEY: There is a sanction
21 behind it?

22 DR. SCHECTER: Yes.

23 MR. FRAWLEY: But in cases where there
24 is no sanction behind it, you say there is a refusal
25 to sell without prescription?

26 DR. SCHECTER: I don't know how far a
27 pharmacist goes in that situation, but we have been
28 told, physicians, that these drugs are not sold over
29 the counter. That means that prescriptions have to
30



1 be written for them.

2 MR. FRAWLEY: And not dealing with
3 the physician and his fee for the prescription, because
4 after all that is not a fee for a prescription, just
5 a fee for a consultation, but there is another thing
6 called a prescription fee, which of course begins
7 and ends in the drug store?

8 DR. SCHECTER: Yes.

9 MR. FRAWLEY: And if this directive
10 of the manufacturer was being followed, which you
11 spoke of, then this anti acid tablet would be sold
12 with an additional fee to the druggist, called a
13 prescription fee?

14 DR. SCHECTER: Yes.

15 MR. FRAWLEY: And all he would do
16 would take the original package from the manufacturer,
17 take the label off and put one of his own labels on,
18 and endorse the language that he received in that
19 physician's prescription?

20 DR. SCHECTER: Yes.

21 MR. FRAWLEY: And that adds to the
22 cost?

23 DR. SCHECTER: Yes.

24 THE CHAIRMAN: It is a fact also,
25 is it not, that in many drugs where there is a
26 requirement to be sold by prescription, that is
27 exactly what the pharmacist does?

28 DR. SCHECTER: Yes.

29 MR. CARIGNAN: Do you see any risk
30



1 or danger in doctors prescribing by trade names only?
2 I ask you this question because I read this green book
3 prepared by the Director, and you say in trade names
4 that give no idea of the contents of the drug, or what
5 chemical family is concerned, is not only confusing
6 but dangerous. He refers to Dr. Modell of Cornell
7 University Medical College, who appeared before the
8 Kefauver committee. I continue to read:

9 "If a doctor prescribes a
10 drug without knowing its
11 make-up, he may not apply
12 the principles of that
13 drug group. He saw the
14 possibility of an accident
15 in prescribing the wrong
16 drug, adding that such an
17 accident would not be a
18 rarity."

19 Personally, do you think that danger does exist? I
20 understand that Dr. Modell teaches only the use of the
21 so-called generic names. According to him, the generic
22 name should be on all prescriptions.

23 DR. SCHECTER: Yes, while I don't
24 really think that there is any great danger to use the
25 trade names. I don't think a doctor will use a trade
26 name drug unless he knows something about it. Some
27 of its indications on toxicity effects
28 but I do feel that if we concentrated more on generic
29 names it would bring more order out of confusion.
30



1
2 We would have a generic name and we
3 would know that this grouping of trade names
4 belonged to this type of tranquilizers and it has
5 these characteristic actions and side effects and
6 toxic effects, and so on.

7 I don't know that there has been
8 any accidents with the use of brand name products,
9 from our staff. But I think that knowing drugs
10 by their generic names is valuable to the doctor.

11 THE CHAIRMAN: Thank you, Doctor.

12 I think we might have a break at
13 this time.

14
15 --- Short Recess
16

17 MR. MACLEOD: Mr. Michel, the Commis-
18 sioner of Patents, is here, and I think he will
19 make a statement and then possibly I will ask
20 some questions.

21 J.W.T. MICHEL, sworn

22 THE CHAIRMAN: Perhaps, Mr. Michel,
23 to begin with you might, if it isn't in your
24 statement, tell us for the record just what your
25 position is.

26 MR. MICHEL: Yes, sir, I will.
27 Mr. Chairman, my name is J.W.T. Michel. I am
28 Commissioner of Patents. I have been in the
29 Patent Office for 32 years, and in charge of the
30 Chemical Division for 20 years, and for the last



1
2 12 years I have been in charge of the whole office
3 as Commissioner.

4 Mr. Chairman, you have advised me
5 that perhaps the best procedure would be for me
6 to outline the operation of the Patent Act in rela-
7 tion to drugs.

8 I believe that I should begin with
9 a brief explanation of the patent system generally
10 and then go on to the specific provisions relating
11 to food and medicine.

12 Fundamentally, the patent system
13 has for its object the improvements of useful arts,
14 the creation of new things and the advancement of
15 science for the benefit of mankind and particularly
16 for the good of the people of the country.

17 It is based on the idea that, in
18 order to arrive at the above results, there should
19 be an incentive to search for new things and to
20 look for progress. This incentive or inducement
21 lies in the exclusive right or privilege granted
22 by the Government to an inventor as a reward for
23 disclosing his invention to the public.

24 The privilege granted by a patent
25 could probably be more clearly seen as the right
26 to exclude others from practising the patented
27 invention.

28 A patent is a contract between the
29 Government and the patentee. It is a true contract.
30 There is an offer and an acceptance. The Government



1
2 on the one hand offers a reward (not monetary) and
3 the inventor or patentee accepts the offer by
4 disclosing his invention. That is, the monetary
5 consideration is offered to the inventor through
6 the development and working of his invention alone
7 for a limited period. At the end of that period
8 the Government and the public have the free use of
9 the invention. The term of a patent in Canada
10 runs for 17 years, after which the patent lapses
11 and is not renewable.

12 A patent, being a kind of monopoly,
13 is not granted without some specific reserves or
14 conditions. This is to protect the public from
15 any abuse of monopoly.

16 On every patent granted in Canada
17 there is reproduced and printed thereon the full
18 provisions of Section 67 of the Patent Act. This
19 Section provides in short that the patentee must
20 work his patent on a commercial scale in Canada
21 within three years, that he must supply the public
22 demand adequately and at a reasonable price. If
23 he fails to do that he is subject to compulsory
24 licensing; that is, anyone capable and willing to
25 manufacture in Canada can obtain a licence at a
26 reasonable royalty, if the patentee cannot explain
27 to the satisfaction of the Commissioner his failure
28 to carry out the terms of his contract.

29 This is in very general terms the
30 system. I shall now turn to one specific section



1
2 of the Patent Act which deals specifically with food
3 and medicine. It is Section 41, which I think I
4 should cite verbatim.

5 Section 41(1): "In the case of inven-
6 tions relating to substances
7 prepared or produced by chemical
8 processes and intended for food or
9 medicine, the specification shall
10 not include claims for the substance
11 itself, except when prepared or
12 produced by the methods of processes
13 of manufacture particularly described
14 and claimed or by their obvious
15 chemical equivalents."

16 Sub-Section 2: "In an action for
17 infringement of a patent where the
18 invention relates to the production
19 of a new substance, any substance
20 of the same chemical composition
21 and constitution shall, in the
22 absence of proof to the contrary,
23 be deemed to have been produced by
24 the patented process."

25 Then Sub-Section 3 says: "In the
26 case of any patent for an invention
27 intended for or capable of being
28 used for the preparation or produc-
29 tion of food or medicine, the
30 Commissioner shall, unless he sees



1
2 good reason to the contrary, grant
3 to any person applying for the same,
4 a licence limited to the use of the
5 invention for the purposes of the
6 preparation or production of food or
7 medicine but not otherwise; and, in
8 settling the terms of such licence
9 and fixing the amount of royalty or
10 other consideration payable the
11 Commissioner shall have regard to
12 the desirability of making the food
13 or medicine available to the public
14 at the lowest possible price consis-
15 tent with giving to the inventor due
16 reward for the research leading to
17 the invention".

18 Then Sub-Section 4: "Any decision of
19 the Commissioner under this Section
20 is subject to appeal to the Exchequer
21 Court".

22 Now, you see from Sub-Section 1 that
23 no product made by chemical process and intended
24 for food and medicine can be patented. The public
25 quite often forgets that. Only the process is
26 patentable if it amounts to invention. I shall
27 repeat again, no inventor of a new product intended
28 for food and medicine and made by a chemical process
29 can obtain a patent or exclusive privilege for his
30 new product. He can only get a patent for the



1
2 process of making it. If another man finds or
3 develops another process of making the product,
4 he is at liberty to go ahead and make it. This
5 is a very severe restriction of the normal right
6 granted to inventors in other fields.

7 THE CHAIRMAN: Does that mean this,
8 Mr. Michel, that several different patents might
9 be obtained for as many different processes of
10 producing an identical product?

11 MR. MICHEL: Yes, Mr. Chairman,
12 provided these different processes are patently
13 different one from the other. Just a small
14 variation or a chemical equivalent would not be
15 patented, and it must amount to an invention in
16 order to be patentable, in the drug field or any
17 other field. It is not only novelty, it must be
18 novelty, usefulness and what we describe in patent
19 parlance as this flash of genius. It must be
20 something that the worker in that art would not
21 have seen normally if he is faced with a new
22 problem and he says: "Oh, sure, I will do it this
23 way". It may be new, but there is no invention.
24 It must be something that goes beyond that, beyond
25 the ordinary skill of the worker in the art. It
26 must be something that has been developed through
27 research. The word "invention" has never been
28 defined.

29 THE CHAIRMAN: It is not just adap-
30 tation.



1
2 MR. MICHEL: No, it is not just
3 adaptation, nor only novelty.

4 Parliament in enacting this Section
5 had in mind the ready availability of medicines to
6 the public.

7 Now, in view of the fact that Sub-
8 Section 1 of Section 41 was restrictive of the
9 rights of the inventors in the drug field, Sub-
10 Section 2 was enacted to counterbalance to a
11 certain extent the restriction, but yet leaving
12 free the bona fide manufacturer of the product
13 who uses a process different from that which is
14 patented.

15 This Section provides that when a
16 medicinal product appears on the market it is
17 deemed to have been made by the patented process.
18 That is more or less a reversal of the ordinary
19 common law.

20 THE CHAIRMAN: That puts the onus on
21 the other foot.

22 MR. MICHEL: Exactly. Therefore, in
23 any dispute or court action the defendant has the
24 onus of proving that his product has not been made
25 by the patented process.

26 Now, here I would like to be more
27 specific from a practical point of view. A man
28 puts a drug or a medicinal product on the market
29 in Canada. He has either made that product
30 himself or he has obtained it from someone who has



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made it in Canada or he has imported it. So it is
the third alternative. Normally this man cannot
be sued for infringement because there is no patent
on the product.

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2 MR. MICHEL: Nobody holds the patents
3 for the products so he goes scot-free normally
4 but then we have Sub-Section 41, (2).

5 Every owner of the process patent
6 can take advantage of the provisions of Sub-Section
7 2, Section 41 and ask my man to prove that his
8 product has been made by a different process. If
9 my man has not infringed the patented process and
10 has used a different process the proof should be
11 easy to make.

12 On the other hand if he has obtained
13 the product from someone else in Canada, he should
14 have made sure that the process patent ~~had not been~~
15 infringed. If he has imported the product from
16 another country he should have made sure that the
17 process used abroad was a different one.

18 Then he would be in the clear. He
19 could make his proof.

20 Now in addition to restrictions put
21 on the inventors in the drug field by Sub-Section
22 1 of Section 41, we have the provisions of Sub-
23 Section 3. Here we have compulsory licensing for
24 every patented process which can be used to make
25 a medicinal product and for any product which may
26 be patented, because no medicinal characteristics
27 or properties were known at the time of discovery
28 and application to the Patent Office.

29 It happens quite often that a
30 product is discovered, a new chemical product is



1
2 discovered mostly in industries. A striking
3 example of this is in the dye field, that is organic
4 dyes, a very great big organic formula. If that
5 were developed by a company making - well, that
6 is their field and just leave it at that.

7 Subsequently someone may find that
8 this product, judging by the facts, very many of
9 these compounds are very very closely related to
10 that; but then in such a case the provisions of
11 Section 41 (3) of the law the Commissioner may
12 grant their licences on that patented product.
13 That is the reason why the wording in Section 41(3)
14 is different from that of Section 41(1).

15 Section 41(1) says: "In the case of
16 inventions relating to substances prepared or
17 produced by chemical processes and intended for
18 food or medicine ---"

19 Now, that is different to Sub-Section
20 3 which says: "In the case of any patent for an
21 invention intended for or capable of being used
22 for the preparation or production of food or medi-
23 cine ---", so that is present in all the rest of
24 the patents which had been taken at the time where
25 medicinal characteristics were not known for that
26 compound; so they are all included.

27 Furthermore, there is no question
28 of a three-year period nor the manufacture in
29 Canada by the patentee or of the public demand.
30 Here at any time after the grant of a patent, anyone,



1
2 who is willing to manufacture themselves and who
3 in the opinion of the Commissioner of Patents is
4 capable of doing so can obtain a non-exclusive
5 licence under any process or product patent for
6 the sole purpose of making food or medicine but
7 not otherwise.

8 The Act says the Commissioner shall,
9 unless he sees good reasons to the contrary, grant
10 a licence.

11 Reasons to the contrary being such
12 as the patentee already manufacturing in Canada,
13 public demand being fully supplied, prices being
14 reasonable, the applicant intending to produce
15 only the bulk material leaving to others the
16 tableting, capsuling, compounding, etc., have all
17 been rejected by the Commissioner of Patents in
18 Canada and by the Comptroller General in the
19 United Kingdom (where the law is similar to ours)
20 and the courts have concurred where appeals have
21 been made.

22 Although the provisions of what is
23 now Section 41 have been in the Patent Act since
24 1923, I am aware of only one application for compul-
25 sory licence under such provisions up to 1949.
26 From 1923 to 1949 only one.

27 THE CHAIRMAN: In 26 years.

28 MR. MICHEL: I must apologize. I
29 think in Toronto I said there were none but my
30 assistant discovered that in the old old files



1
2 about two months ago.

3 THE CHAIRMAN: There was one in the
4 first 26 years.

5 MR. MICHEL: Yes, only one. However,
6 from 1949 to date there have been 14 applications.
7 Of these 14 applications, five were granted by the
8 Commissioner; three were settled between the
9 parties by the grant of licences before the ruling
10 of the Commissioner.

11 The application had been made and
12 then when the companies saw it was before the
13 Commissioner they reviewed the previous cases -
14 "We haven't got a chance there" - they just settled.

15 One was refused. The applicant in
16 that case did not intend or was not willing to
17 manufacture in Canada. His only intention was
18 importing the goods. I didn't feel I had the right
19 under the Act to grant the patent and that appeal
20 went to the Exchequer Court.

21 THE CHAIRMAN: He wanted a licence to
22 import himself?

23 MR. MICHEL: Yes, only that he was -
24 I was unable to pin him down in my hearing but I
25 was supported on that.

26 Five are still pending. Of these,
27 five have come within the last year. One of them
28 has been delayed on account of negotiations between
29 the parties and is now active because negotiations
30 have broken down.



1
2 They asked me to withhold action
3 pending negotiations, which have now broken down
4 and it is now active.

5 THE CHAIRMAN: You mean there are
6 five cases that are still undisposed of?

7 MR. MICHEL: Undisposed in front of
8 me. They all have come within the last year. The
9 first one was last July. After it came on, the
10 parties told me "Just hold on, we are trying to
11 negotiate". A month ago the negotiations broke
12 down and it is now active.

13 On another one I have had a hearing
14 a few weeks ago. I think it was the 29th, 30th
15 and 31st of May. My ruling will come out within
16 the next few days. One is now being processed
17 and the other two have come in within the last two
18 weeks during my holidays which I have not touched
19 as yet.

20 THE CHAIRMAN: Can you give us any
21 idea, if there is any similarity in times, how
22 long it takes from the making of an application
23 for compulsory licensing to obtain it if the
24 process goes on and is not delayed by arrangements
25 about negotiations?

26 MR. MICHEL: I don't think the time
27 can be shortened to less than seven or eight months.
28 In the first place I have read to you Section 41
29 which unfortunately nobody ever thought of making
30 regulations to govern it.



1
2 There are regulations governing
3 Section 67 which I have mentioned before, for
4 compulsory licensing on any industrial products
5 and machines in which there is abuse of privilege.
6 There are regulations for that.

7 They do not all apply so that the
8 first case in 1949 was started by my predecessor.

9 He started the case. There was something that
10 did not go in right and I called another hearing
11 after telling them there are no rules. The Commis-
12 sioner was entitled to make his own rules and I
13 proceeded with that. There was an appeal and
14 Justice Fournier, I believe, said "There being no
15 regulations for Section 41, the Commissioner has
16 the right to direct proceedings the way he wants
17 it"; so I have been following more or less the
18 sequence outlined in the regulations for Section 67.

19 I am just using what is adaptable
20 and can be used for that purpose.

21 An application is made. Now, I have
22 quite a bit of work to do. I cannot always go on
23 it right away. Let us say I take a month or so
24 before I order the advertisement. The application
25 is made. Then you might think, in the first
26 instance, this is only an ex parte affair. Well,
27 they cannot very well be ex parte because there
28 is the applicant and the patentee but generally
29 the public is interested so I order the advertise-
30 ment of the application in the Canada Gazette and



1
2 in the Patents Office Record.

3 The Patents Office Record is a weekly
4 publication of the Patents Office. It must go out
5 on time and unfortunately it is a very complicated
6 thing to prepare and we have to send out the
7 material, edit the thing, four or five weeks ahead
8 of time so when the issue is being prepared we
9 have sent it over there. We cannot add anything
10 more to it but sometimes I am able to push the
11 advertisement in within three weeks if the appli-
12 cant has sent me the fee. Then he gets the
13 advertisement in the Canada Gazette. It is quicker
14 and then I order him to serve upon the patentee
15 the application and affidavit connected with it.

16 There are 60 days given to the
17 patentee to file a counter-statement. The 60 days
18 is taken from Section 67. After that counter-
19 statement is filed the applicant has 30 days
20 within which to reply.

21 Then I have my application. I have
22 the counter-statement of the patentee. I have
23 got the reply of the applicant and then from there
24 I look at all the material and if I am satisfied,
25 one way or the other, I am satisfied for instance
26 I should grant the licence. If I know the appli-
27 cant's firm, if I know that the firm can make that
28 product. It has got the knowledge and it has got
29 the money to make it, the capital and equipment,
30 and I know from experience that such-and-such a



1
2 patentee will come with such-and-such a reason to
3 the contrary; which is always that this product
4 is very very dangerous, should not be put into the
5 hands of everybody else and I can supply the public
6 demand. My price is reasonable. He will always
7 say "The other fellow can make it".

8 In that case I grant the licence. I
9 have granted two in the last two years, I think,
10 without a hearing and I have been sustained. On
11 the first one there was an appeal taken from that
12 decision by the patentee to the Exchequer Court
13 claiming I had overdone my powers but Justice Cameron
14 of the Exchequer Court said that I had the power
15 to do it.

16 That shortens the proceedings.

17 If I do not have all the facts that
18 satisfy me, then I appoint a hearing and in order
19 to appoint a hearing you must give them 30 clear
20 days to come in and prepare themselves.

21 I hear the case and then after that
22 in some cases I have rendered my decision without
23 waiting for the transcript from the stenographer
24 and in some other cases I have preferred to have
25 the transcript so that the shortest time would be
26 seven or eight months.

27 THE CHAIRMAN: Does it boil down to
28 this: any drug manufacturer who applies for a
29 compulsory licence and satisfies you his company
30 has the resources, the know-how, and equipment to



1
2 manufacture that drug properly, is entitled to a
3 licence?

4 MR. MICHEL: They are absolutely
5 entitled to a licence.

6 THE CHAIRMAN: And they get the
7 licence?

8 MR. MICHEL: And they get the licence.

9 THE CHAIRMAN: The difficulty is, I
10 suppose, in proving those points?

11 MR. MICHEL: Not necessarily. It is
12 fairly easy to prove those points. After all, the
13 onus is such a thing - when the applicant makes an
14 application he tells me what he has; he tells me
15 his equipment, his financial organization, his
16 equipment and his setup.

17 Well, I am a chemical engineer, 35
18 years practice myself so I happen to be in the
19 happy situation that I can understand these things
20 and it is mostly the same people that come to me
21 all the time.

22 THE CHAIRMAN: I was wondering if
23 the patentees were in a position to throw many
24 roadblocks in the way.

25 MR. MICHEL: Oh, they try to. I
26 don't mind telling you here they try to.

27 THE CHAIRMAN: I can understand they
28 would.

29 MR. MICHEL: Since 1919 they have had
30 similar provisions in the U.K. that we have had



1
2 since 1923. They are still bringing the very same
3 reasons that they were bringing back in 1923 in
4 the U.K., which had been thrown out.

5 What I have already discussed here
6 is probably a resume of the end of this.

7 I am not looking for more work. I
8 have more than I can handle but with the tremendous
9 activity in the drug field, I have been amazed at
10 the very little use made of the provisions of the
11 Patent Act that I have just explained.

12 It may be that the very presence of
13 the licensing provisions in the Patent Act has had
14 a salutary effect on the owners of drugs patents
15 and that a certain number of licences have been
16 granted voluntarily, but there is still a marked
17 tendency on the part of foreign companies holding
18 Canadian patents to object very strenuously to the
19 grant of licences.

20 We still have that.

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2 THE CHAIRMAN: Do you have a record
3 of all the licenses that have been granted voluntarily?

4 MR. MICHEL: Yes, I have a record attached
5 to this statement which I can leave with you, Mr.
6 Chairman. I have a list of these fourteen.

7 THE CHAIRMAN: These are the compulsory
8 ones?

9 MR. MICHEL: They are the fourteen
10 granted, refused, agreement and pending. That is the
11 list. That was - I didn't know it might be useful for
12 the Committee. I only have the name of the applicants.
13 If the Committee wants it I can supply you with the
14 name of the applicant and the name of the patentee.

15 THE CHAIRMAN: These fourteen are all
16 cases in which applications were made for compulsory
17 licenses?

18 MR. MICHEL: Yes.

19 THE CHAIRMAN: I was wondering if
20 you have the full record of the voluntary ones granted
21 by companies without recourse to

22 MR. MICHEL: No, I don't have that. It
23 would be a very, very difficult task to trace them
24 because there is roughly 200,000 patents which are
25 enforced in Canada.

26 THE CHAIRMAN: In drugs?

27 MR. MICHEL: Not in drugs. In drugs -
28 in antibiotics I would say that there would be about,
29 I think it is 500, roughly 500 patents.

30 THE CHAIRMAN: In antibiotics?



1 MR. MICHEL: In antibiotics, yes.
2 Naturally there are others. You see all voluntary
3 licenses are not always registered. It is not
4 compulsory to register them so an assignment of patent
5 is null and void against a third party if not
6 registered to a license. The Act, the regulations
7 allow us to record a license if it is presented to us,
8 and I have knowledge of a great many number of licenses
9 which have been granted and never recorded with us.
10 Any figure I might have would mean nothing.

11 THE CHAIRMAN: You know there are a
12 great many?

13 MR. MICHEL: I wouldn't say a great
14 many, not very, very, very great because I know - as
15 I have just said I have been amazed myself, although
16 I am not in the field, at the small amount, so very
17 little use made of the provisions - amazed that the
18 Canadian companies haven't asked for more licenses.
19 I don't know why. Naturally, we have very few
20 strictly Canadian companies, mostly the manufacturers
21 in Canada are subsidiaries of American companies and
22 naturally they manufacturer under the patent of the
23 parent company, the Canadian patent being held by
24 the American firm. That is their business. That is
25 an arrangement between themselves. It seems to
26 me - I am a Civil Servant. I probably should not go
27 very, very far in this. It seems to me if the price
28 of drugs has been so high, why is it that no more
29 Canadian companies have started manufacturing because,
30



1 afterall the royalty is a pittance as against the
2 profit that could be made. That is the reason why
3 the foreign patentees don't want to grant licenses
4 voluntarily because they make much more profit by
5 selling themselves than by just collecting a royalty.

6 THE CHAIRMAN: I was wondering if an
7 American owned subsidiary in Canada that you say act
8 under their patent, do you think there is a sort of
9 mutual respect of each other's patent in Canada and
10 that is why they don't apply for compulsory licenses
11 of other companies' patents; for example, a subsidiary
12 of one American company does not apply for a voluntary
13 license in Canada for a patent owned by another
14 American company because he wants to reserve his own
15 patent against that other company?

16 MR. MICHEL: You may have something
17 there, Mr. Chairman. You may have something.

18 THE CHAIRMAN: I was wondering if
19 you had any knowledge?

20 MR. MICHEL: I have no actual
21 knowledge, but there well may be something.

22 THE CHAIRMAN: It is just a surmize
23 that I am making.

24 MR. MICHEL: Just a surmize. If you
25 are wondering if the patent office is as efficient
26 as it could be with the amount of money the government
27 provides for the administration of the office - it
28 can never be a perfect body. We are all human.
29 We all make mistakes. We all have limitations. After-
30



1 all the law in Canada says you get a patent provided
2 your invention is new all over the world, provided
3 you are the first inventor, new all over the world.
4 It is impossible to have a Canadian patent office
5 all over the world, impossible, so that there is -
6 there are a great number of patents that are granted
7 which would be invalid in Court if taken to Court.

8 Some years ago Dr. Fox of Toronto
9 made a survey on it and he came to the conclusion that
10 the percentage of patents which had gone to Court and
11 been invalidated was lower than in the United States,
12 so I would not say our standards are higher, but we
13 are not any worse, and naturally if you look at these
14 figures, they are high figures. You will find patents
15 being declared invalid by the Court - it doesn't
16 represent at all the patent system because any
17 manufacturer who goes to the expense of taking it to
18 Court has a good patent agency advising him and is
19 not going to take a good patent to court. All the
20 patents that go to Court are not the better ones.
21 The better ones are really respected, so that the
22 high percentage which is declared invalid is not the
23 true gauge of the value of the standard of patents in
24 Canada.

25 THE CHAIRMAN: Would that percentage
26 be smaller in drugs compared to other patents?

27 MR. MICHEL: Well, to tell you the
28 truth the overall percentage of drug patents, if they
29 were all taken to Court, although we are very careful
30 it is possible the percentage of invalidated patents



1
2 might be higher.

3 THE CHAIRMAN: High?

4 MR. MICHEL: Higher because of this,
5 Mr. Chairman, my examiner - he had an application for
6 a chemical product which is going to be used for drugs.
7 He knows right there that the right of that inventor
8 is going to be restricted by the provisions of Section
9 41-1, so he is faced with dilemma - I can't give him
10 a patent on his new product, so he is out. Then I
11 look at his process. I force him to put a process
12 name on if he has one. I look at this process. Well,
13 you can't tell me the examiner looking at the process -
14 I don't know whether it is patentable or not. I have
15 doubt. I have doubt. If I refuse the process I
16 may make a mistake. He may have something so that
17 you give him a chance. You may be a little more
18 lenient on process patent than you might otherwise
19 be if the drug could be patented. The Court would
20 probably not be as lenient as that. That is one of
21 the reasons why I say the number of process patents
22 on drugs going to court being invalidated might be
23 higher.

24 There is only one paragraph more in
25 here.

26 I should only add, however, that in
27 my opinion the patent system, if it is a factor in the
28 high price of drugs, it certainly is not the main
29 factor. Research in the medical and drug field is
30 carried to a considerable extent abroad, although I am



1 pleased to point out there is a sizeable amount of it
2 done in Canada by our governments, by our universities
3 and by a section of the pharmaceutical industry. I am
4 wondering if too drastic a treatment of the patent
5 system would not harm the modest, but bona fide, efforts
6 of those doing research in Canada more than the quota
7 of the high price of drugs which might be attributed
8 to the patent system. After all our pharmaceutical
9 manufacturing industry is still small, but so were
10 most of our industries not so many years ago.

11 Now, gentlemen, I have made a statement
12 of the operation of the Patent Act. I shall be pleased
13 to answer your questions and supply any further
14 details you may want to know.
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2	28	Frank W. Homer	Granted
3	37	Fine Chemicals of Canada Ltd.	Granted
4	49	Gilbert Surgical Supply Co. Ltd.	Refused
5	51	Charles E. Frosst & Co.	Granted
6	52	Delmar Chemicals Limited	Agreement
7	55	Fine Chemicals of Canada Ltd.	Granted
8	67	Delmar Chemicals Limited	Agreement
9	70	Kent Chemicals Limited	Agreement
10	77	Micro Chemicals Limited	Pending
11	78	Fine Chemicals of Canada Ltd.	Granted
12	85	Level Brothers Limited	Pending
13	86	Micro Chemicals Limited	Pending
14	88	Fine Chemicals of Canada Ltd.	Pending
15	89	Fine Chemicals of Canada Ltd.	Pending

16			
17			
18		Granted	5
19		Refused	1
20		Agreement	3
21		Pending	<u>5</u>
22		Total	14

23

24 During the last year there have

25 been six applications.

26

27

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1
2 MR. MACLEOD: Mr. Michel, can you
3 give us any estimate of the percentage of the patents
4 which are patented in Canada which are obtained by
5 Canadians?

6 THE CHAIRMAN: In the field of drugs?

7 MR. MICHEL: Less than six per cent,
8 5.9 in the last year.

9 MR. MACLEOD: Is that patents generally?

10 MR. MICHEL: Yes.

11 MR. MACLEOD: What would the situation
12 be with respect to patents on drugs?

13 MR. MICHEL: Well, frankly, sir, I
14 think no record has ever been kept on that. You say
15 patents of Canadian origin?

16 MR. MACLEOD: Yes.

17 MR. MICHEL: I would say the
18 percentage would be lower.

19 MR. MACLEOD: Would be lower. It is
20 six per cent and in the case of drugs you think it
21 might be lower.

22 MR. MICHEL: Definitely, I would say
23 definitely lower, definitely lower. Of course, here
24 I must explain, don't get scared by this figure of
25 six per cent of Canadian inventions, don't go along
26 and think our Canadian people are dumb. I have
27 to explain that - I work for the Secretary of State,
28 and we change Ministers every year and I have to
29 explain to him. It is not every year, but quite
30 often.



1 MR. FRAWLEY: Every time there is
2 a new minister.

3 MR. MICHEL: The explanation seems
4 to me - we have made a survey in the Patent Office
5 of this, and foreign inventors, foreign companies
6 that apply here - we follow the trend and we look,
7 we look for these inventions, where they made
8 applications. We will find most inevitably the
9 American, Frenchmen, Englishmen, German, Italian -
10 they will file at home and the next filing is Canada.
11 The British will only file in the States after
12 filing in Canada. The French are doing the same
13 thing. It is a coincidence.

14 The explanation, whether I am right
15 or wrong about economics, we are a young and obviously
16 progressing country getting industrialized. I think
17 most of these people, most of the manufacturers
18 know that we have all kinds of natural resources.
19 I think they have great confidence in the future of
20 Canada. I think that is the explanation. Afterall,
21 if you go to some other countries which are not
22 very, very big, like us, you will find a very great
23 percentage come from - if these countries are
24 industrialized, a very great number of applications
25 come from foreign countries. The United States
26 only gets 15 per cent of foreign applications that
27 come through. In Great Britain I think in the
28 order of 40 percent are foreign.

29 MR. MACLEOD: Forty per cent?
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MR. MICHEL: That figure is ours,
just roughly about that, and Australia very close
to us, for instance.

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2 MR. MACLEOD: Mr. Michel, in setting
3 royalties or obtaining information to set royalties
4 under compulsory licenses, have you received any
5 information that would enable you to form an opinion
6 on the comparative selling prices of the holder of
7 the patent and the proposed selling prices of the
8 compulsory licensee?

9 MR. MICHEL: I can only answer in
10 very, very general terms this thing. The applicant
11 for the proposed license will always come and tell
12 me that he can produce the drug much cheaper, and
13 sometimes he gives me a price. It is difficult for
14 him you see. He may have the knowledge, the equipment
15 and things like that, but he has not manufactured
16 commercially. If he had, he would have been infringing,
17 and subject to infringement action, so that he can
18 only figure out as best as he can his manufacturing
19 cost and his profit and his overhead, and things
20 like that.

21 In most cases, they have come to
22 me that they can manufacture much cheaper. Some of
23 them have come. I heard a figure from Dr. Schecter
24 a while ago on chlorpromazine. I had the same
25 figures given to me.

26 MR. MACLEOD: All you can say is
27 that you have been told by applicants that they can
28 manufacture more cheaply than the present patent
29 holders?

30 MR. MICHEL: Right.



1 MR. MACLEOD: Not manufacture, but
2 propose to sell much cheaper?

3 MR. MICHEL: To sell, yes.

4 MR. MACLEOD: Has your work in this
5 field given you sufficient knowledge to express an
6 opinion on the competence of Canadian manufacturers
7 to manufacture more drugs than they are? Are there
8 manufacturers in this country, to your knowledge,
9 who could apply for and benefit by compulsory licenses?

10 MR. MICHEL: Plenty of them.

11 MR. MACLEOD: The facilities are there
12 if they would take advantage of the Act?

13 MR. MICHEL: Plenty. There are plenty
14 who have the knowledge and chemical skill, and who
15 could acquire the knowhow, and there are some that
16 are manufacturing. Some could organize and manufacture,
17 probably because after all some of these drugs are not
18 very difficult. Dr. Schecter was talking about
19 cortisones today. There are some Canadian manufacturers
20 who certainly couldn't manufacture it, but certainly
21 not everybody, but there are some of those wonder
22 drugs that you are talking about, there are a whole
23 lot of them which are very easy to manufacture.

24 MR. MACLEOD: Do you recall the
25 application for a compulsory license in respect of the
26 drug benzhydryl, I think, in which Fine Chemicals of
27 Canada Limited applied for a compulsory license in
28 respect of the patent held by Parke-Davis and Company
29 Limited, and the case was carried to the Supreme Court
30



1 of Canada?

2 MR. MICHEL: Yes.

3 MR. MACLEOD: The litigation lasting
4 about four years?

5 MR. MICHEL: Yes.

6 MR. MACLEOD: Did that case clear up
7 legal points in connection with the issuing of
8 compulsory licenses?

9 MR. MICHEL: I think it did. I think
10 I had Fine Chemicals before me on several occasions,
11 but I think the benzhydryl case cleared the point
12 that they were entitled to a license, even though they
13 didn't intend to carry on the compounding, tableting,
14 and pelleting, and things like that. They wanted to
15 manufacture the bulk product and sell it. I think
16 that was one of the issues of the case, and I think
17 the main issue in that case.

18 MR. MACLEOD: What I was working around
19 to was this. An official of Connaught Laboratories
20 in Toronto has publicly stated that he was refused
21 a voluntary license in respect of a drug which he
22 thought should be produced in Canada, and he didn't think
23 it worthwhile to apply for a compulsory license, because
24 he was under the impression that the delays would
25 amount to years, and he was doubtful as to success
26 in the end.

27 MR. MICHEL: I don't know.

28 MR. MACLEOD: Could that impression
29 have been abroad before the benzhydryl case?
30



1 MR. MICHEL: It could have. If this
2 occurrence happened after the benzhydryl case. It
3 may be that this gentleman was under the impression
4 that the patentee would go right up to the Supreme
5 Court every time, but of course we must not forget
6 that I have said before 1949 there was only one case,
7 and my assistant told me only not very long ago.
8 There was only fourteen cases, five of which are
9 still pending, and nine undecided in the last ten
10 years, so we are just starting to build juris prudence
11 on that, but as I told the Chairman a while ago, an
12 application coming from a competent company, prepared
13 by a competent agent, could be disposed of within a
14 year. I don't think, now, there have been a few
15 cases taken to Court and most of the contentious
16 points on that have been resolved I believe. I don't
17 expect from now on that a good competent manufacturer
18 would be taken to Court very often.

19 MR. MACLEOD: Nevertheless, it is
20 probably a fact that if the patent holder wanted to
21 resist the claim and to exhaust his legal resources,
22 he could appeal and appeal and appeal right up to
23 the Supreme Court of Canada?

24 MR. MICHEL: He could, but what I do
25 is this. When issuing my ruling I tell them all the
26 time: "Now, there is going to be a license and the
27 license is going to be effective as of today.",
28 that is the date of my ruling. Subject to convenience,
29 I found more convenient and more humane, I usually
30



1 give the parties sixty days to get together and work
2 out the thing. In some cases I fix the royalty and
3 say; "You go home together and take 60 days to
4 draft your license, and if you don't do it in 60 days,
5 I will do it." I feel that after the decision that
6 I say there will be a license, the two parties will
7 feel happier if they get together and say: "Let us
8 iron out and draft a license", than the Commissioner
9 stepping in and drafting the license and saying: "Here
10 it is, you take it and you take it". I have always
11 felt it was better.

12 It has been done both ways in the
13 U.K., but I have felt it was better that way, because
14 I always say that the license after my ruling the
15 license will date as of that date, and I have in one
16 of these cases which was taken to Court, I don't
17 remember which one, the counsel for the Applicant
18 saying to me, the Applicant, the prospective licensee,
19 came to me and said: "Now, this case is being appealed
20 by the patentee. You have said the license is
21 effective as of the date of your ruling. What will
22 happen to my client if he starts to manufacture
23 before the case is disposed of by the Court". I
24 said so far as I am concerned I have said that the
25 license was effective as of today, and I know that
26 his client has started to manufacture as of that
27 date. The case was brought to Court, fortunately
28 for him the Applicant won the case, so that nothing
29 happened, but as far as I know during the proceedings
30



1 the patentee didn't object too much to that fact.

2 THE CHAIRMAN: If the Applicant
3 lost out in court, then what would happen if he
4 had been manufacturing in the meantime?

5 MR. MICHEL: Well, that lawyer after
6 discussing with me, came to the conclusion that he
7 would feel on pretty sound ground to defend his
8 client if the other party had claimed damages.

9 THE CHAIRMAN: There has been no
10 final legal decision on that point?

11 MR. MICHEL: On that point, no sir.

12 MR. MACLEOD: This opinion has been
13 expressed, and I just wanted to put it to you, without
14 saying it is right or wrong, and ask you if you can
15 comment on it. That for a number of years, while
16 it was customary to obtain patents of chemical drugs,
17 that biologicals, serums and vaccines were not
18 patented as a general rule but that within the last
19 few years patents are now being obtained on these
20 biologicals, serums, vaccines and so on?

21 MR. MICHEL: It is right, and it has
22 become an awful headache for the patent officers.
23 I have discussed it two years ago with the former
24 Commissioner of Patents in the United States, Robert
25 Watson, and he had the same headache, only his was
26 bigger than mine.

27 MR. MACLEOD: So is it in fact there
28 is an increasing activity in this?

29 MR. MICHEL: Yes, last year at
30



1 Honey Harbour on the occasion of the annual meeting
2 of the Canadian Patent and Trade Mark Institute, I
3 was present and an American patent agent gave a paper
4 on that, and he was very well versed in the matter.
5 and I discussed it with him. We have found no
6 solution. It is very difficult. There are not very
7 many, but we have that problem. They are inventions.
8 Some of them we have to rule it under Section 2(d)
9 of the Patent Act, because what is patentable, but
10 in many cases we have got to take them under the Act.

11 MR. MACLEOD: Is Italy a signatory
12 of the International Patent Convention?

13 MR. MICHEL: Yes, for the protection
14 of industrial property, yes, Italy is.

15 MR. MACLEOD: Is there any conflict
16 between the fact that it is a party to this convention
17 and the fact that it does not afford a patent protection
18 on drugs, or are the two things entirely separate?

19 MR. MICHEL: That is a legal opinion,
20 and the Burn Committee would be more qualified to
21 answer. In my opinion, no. The basis of that
22 convention is that if you are in a convention you
23 are obliged to protect the citizens or the nationals
24 of other member countries in the same manner as
25 you protect your own nationals. If you grant a patent
26 for drugs to your own nationals, you have got to
27 grant it to applications which come from foreign
28 countries which are members of the convention, but
29 there is nothing in the convention that says we shall
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1 protect drugs. They are inventions, but we are
2 free in our legislation to say what is protected, and
3 I don't think the question has been raised, and I may
4 be a little blunt in answering it that way. Some
5 people may think it is going too far, but it is
6 national treatment period, and another thing is that
7 that convention dates from 1883, and I think Italy
8 was one of the original founders of the convention,
9 Italy has always been in the convention, and no country
10 to my knowledge has ever objected to that.
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2 There has been concerted action by
3 some countries to try to get Italy to change their
4 law in that connection. Other countries have
5 done so, and even some governments have put some
6 pressure on, not on behalf of the convention or
7 on account of the convention.

8 MR. MACLEOD: Mr. Michel, are you
9 familiar with the book, "Patents Throughout the
10 World" by William Wallace White?

11 MR. MICHEL: Yes. That is a book
12 which is being kept up to date; oh, I think about
13 two or three times a year I think we have that.
14 We had the very first edition, and it is being
15 kept up to date.

16 MR. MACLEOD: Do you regard that
17 book as a very reliable source of information on
18 patent law in other countries?

19 MR. MICHEL: It is fairly accurate.
20 Unfortunately, it is a resume of the patent law of,
21 I think, 125 countries. The statements are usually
22 correct.

23 MR. MACLEOD: But they are very brief.

24 MR. MICHEL: They are very, very
25 brief. I have used it this morning again. What
26 was there was true, but we didn't have enough to
27 answer my question.

28 MR. MACLEOD: The only reason I am
29 asking is that it is referred to in what is called
30 the Green Book, and I wanted to get your answer as



1
2 to what extent the information in it is relied on.

3 MR. MICHEL: Yes, it is relied on.

4 There is another one which has been prepared, it
5 is a bigger form, by the Central Bureau of the
6 Convention you have just mentioned. That one is
7 in France, and it is now being revised. The edition
8 we have is five or six years old. I know that the
9 fee portion has been revised, they are now revising
10 it. Those are the only two that really are compila-
11 tions of the laws of the different countries.

12 MR. MACLEOD: Those are the only
13 questions I have.

14 CROSS-EXAMINATION BY MR. FRAWLEY:

15 MR. FRAWLEY: Mr. Michel, is the
16 concept of the compulsory licence limited to food
17 and medicines?

18 MR. MICHEL: Well, it depends. I
19 will explain, sir.

20 As I have said, for food or medicine
21 you must have a licence if you are willing and
22 capable of manufacturing. If the patent concerns
23 a process or a product which is made by a chemical
24 process --

25 MR. FRAWLEY: That is described by
26 Section 41, Sub-Section 3.

27 MR. MICHEL: Yes.

28 MR. FRAWLEY: If I have a patent for
29 a lawn mower, can my friend Mr. MacLeod go to you
30 and ask for a licence to make the same lawn mower?



1
2 MR. MICHEL: It depends on what you
3 are doing with your lawn mower. If you have a
4 patent and you are manufacturing your invention
5 in Canada, in the first three years nobody can
6 touch you, but after three years you must manufac-
7 ture in Canada. If you don't, you are subject to
8 compulsory licensing and Mr. MacLeod can come in
9 and say: "I want a licence because this gentleman
10 has a patent and he does not utilize it and he
11 does not make it available to the public, and that
12 is contrary to Section 67". I call you and I say:
13 "What have you been doing with that patent?" If
14 you can give me a satisfactory explanation, which
15 in the case of a lawn mower I don't think you could,
16 then --

17 MR. FRAWLEY: That is a somewhat
18 different consideration. I look at Sub-Section 3
19 of Section 41, and that reads that in the case of
20 any patent respecting food and drugs, if someone
21 applies for a compulsory licence the Commissioner
22 must grant it, subject to the conditions set out
23 in the Sub-Section.

24 MR. MICHEL: Yes, unless he sees good
25 reason to the contrary.

26 MR. FRAWLEY: If someone else wants
27 to share the patent of mine which I am working,
28 can he get a compulsory licence from you?

29 MR. MICHEL: No.

30 MR. FRAWLEY: These things involve



1
2 the public health and welfare of the public.

3 MR. MICHEL: Yes, I believe that was
4 the reason.

5 MR. FRAWLEY: Perhaps also there
6 might have been some detriment from the monopoly
7 of the manufacture of food and drugs, and that is
8 another reason for making provision of the sharing
9 of that data.

10 MR. MICHEL: At that time I wouldn't
11 think so. If you have three or four minutes I
12 can explain the beginning of these sections.

13 It all started in 1919 after the
14 first war in Great Britain. As you know, the
15 Germans had always been great in chemicals and
16 the manufacture of dye-stuffs, and before the
17 1914-18 war they were holding chemical patents
18 and dye patents in Great Britain. After the war -
19 during the war, well, they were using it, and
20 after the war the British Government enacted a
21 section which is fairly close to what we have
22 here, but instead of saying in the case of an
23 invention relating to substances prepared or pro-
24 duced by chemical processes, the British section
25 said relating to substances prepared and produced
26 by chemical processes or intended for food and
27 medicine. So that they were covered. It meant
28 that no chemical product could be patented in
29 Great Britain at that time. They went along with
30 that until 1949 when they dropped that. That was



1
2 1919. There were few countries, I think, who had
3 legislation permitting the patenting of drugs.
4 Right now there are still very, very few. They
5 have kept the equivalent of 41(3). The result is
6 that in Great Britain any chemical, even for drugs
7 or food, is patentable, and in the United States;
8 I think they are the only two countries.

9 As you know, the report of the Royal
10 Commission on Patents recognized that drugs were
11 patentable but that we keep enlarging the licensing
12 provision, enlarging them in this way, with surgical
13 appliances. The Royal Commission recognized legis-
14 lation along the line of the British legislation
15 where surgical appliances would come under the
16 licensing provision.

17 MR. FRAWLEY: Thank you, Mr. Michel.
18 Now, what has been the experience with respect to
19 the benefits from Section 41, Sub-Section 3 from
20 the point of view of reducing the price of the
21 patented drugs?

22 MR. MICHEL: I am not in the industry;
23 I cannot answer that. If you look at the number of
24 applications which have been made before the Patent
25 Office, there have been only fourteen, and only
26 nine disposed of so far. Those compulsory licences
27 have not, probably have not reduced the price of
28 drugs very, very much, but that is not the fault
29 of the patent system, that is the fault of the
30 people who have not applied for it.



1
2 MR. FRAWLEY: I take it you would say
3 Sub-Section 3 of Section 41 has not been made very
4 good use of.

5 MR. MICHEL: Very little use of it,
6 and I wonder why.

7 MR. FRAWLEY: Now, you have said to
8 Mr. MacLeod that the applicants for compulsory
9 licence uniformly indicate to you that they can make
10 the product more cheaply than the existing patentee.

11 MR. MICHEL: In most cases they do.

12 MR. FRAWLEY: Do you have any system
13 of policing that or do you regard it your business
14 to police that after you issue the licence?

15 MR. MICHEL: I have no authority
16 whatsoever to do that.

17 MR. FRAWLEY: We have the situation,
18 anyway, that although the applicant for the compul-
19 sory licence indicated to you what a fine fellow
20 he is and how he can make this cheaper, you have
21 no way of knowing whether or not he just goes on
22 charging the same price and he sticks uniformly to
23 the price that the original patentee charged.

24 MR. MICHEL: When he tells me that
25 he can make it cheaper, that doesn't impress me.
26 I want to know whether he is willing to manufacture
27 and can manufacture. If he can do that at a
28 cheaper price, so much the better.

29 MR. FRAWLEY: I am wondering what
30 good the Sub-Section does as far as the public is



1
2 concerned. Probably none at all.

3 MR. MICHEL: I cannot comment on
4 that. If the public used it it probably would do
5 some good; but if it were not there the public
6 would probably suffer more.

7 MR. FRAWLEY: Here is a Sub-Section
8 that stands all by itself in the Patent Act and
9 provides that a month after the patent is issued
10 an applicant can come along and if he complies
11 with the conditions he can have a compulsory
12 licence, and that is a special privilege limited
13 to the patents of foods and drugs.

14 MR. MICHEL: Yes.

15 MR. FRAWLEY: And yet you say there
16 is very little use made of it.

17 MR. MICHEL: It is not my business
18 to check up on that.

19 MR. FRAWLEY: Thank you very much, Mr.
20 Michel.

21 THE CHAIRMAN: Thank you very much,
22 Mr. Michel.

23 We will adjourn until 10 tomorrow
24 morning.

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26 --- Whereupon the hearing adjourned to 10 a.m.



Ottawa, Ontario,
Thursday, July
6th, 1961.

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--- On resuming at 10 a.m.

MR. MACLEOD: Mr. Chairman and Mr. Commissioners. We have this morning two gentlemen from D.V.A., Dr. Misener and Mr. Shaw. I will ask Dr. Misener to come forward first.

DR. CLAIR CAMPBELL MISENER, sworn

DIRECT EXAMINATION BY MR. MACLEOD:

MR. MACLEOD: What is your position, Doctor?

DR. MISENER: I am one of the medical administrative assistants to the Director General of Treatment of Services at the head office of D.V.A. Among other responsibilities, Secretary of the Departmental Pharmaceutical Committee and charged with the responsibility of keeping an eye on the departmental drug situation.

MR. MACLEOD: Are the drugs for the D.V.A. hospitals across the country ordered through the head office at Ottawa?

DR. MISENER: Yes, except for minor local purchases immediately needed.

MR. MACLEOD: Is the Department of Veterans' Affairs a large user of drugs?

DR. MISENER: Yes.

MR. MACLEOD: Do you know what Government Departments are large purchasers of drugs?

DR. MISENER: Our Departmental Purchasing Agent perhaps could tell better but we are;



1
2 possibly National Defence; Health and Welfare, for
3 their system of hospitals. Offhand that is what I
4 would mention.

5 MR. MACLEOD: Your Department purchases
6 independently from other Departments?

7 DR. MISENER: Yes.

8 MR. MACLEOD: You said that you were
9 Chairman of the Committee on --

10 DR. MISENER: I am Secretary of the
11 Departmental Pharmaceutical Committee.

12 MR. MACLEOD: Secretary of the Depart-
13 mental Pharmaceutical Committee. With what problems
14 is that Committee concerned?

15 DR. MISENER: It is comprised of all
16 the Chiefs of Service (Medicine) in our Departmental
17 Hospitals across Canada and they advise the Director
18 General of treatment services on all technical and
19 professional matters relating to drugs used or paid
20 for by the Department.

21 MR. MACLEOD: Doctor, this inquiry
22 relates to the manufacture, sale and distribution
23 of drugs in Canada. Perhaps you would just tell
24 the Commission generally what problems arise in
25 connection with drugs and in connection with D.V.A.
26 operations; what difficulties you have and what
27 steps you have taken to meet them and so on.

28 DR. MISENER: I will be speaking from
29 the medical treatment point of view.

30 MR. MACLEOD: Yes.



1
2 DR. MISENER: I think it should be
3 understood first treatment in Departmental Hospitals
4 is completely decentralized from head office. The
5 control of treatment is in the hands of Chiefs of
6 Service and they are, with a couple of exceptions,
7 part-time doctors.

8 They have their own practices. In
9 University centres they are connected with the
10 University Medical School and usually have appoint-
11 ments in other hospitals too.

12 Furthermore one of their duties is to
13 do post-graduate teaching to the interns and resi-
14 dents in D.V.A. hospitals.

15 Therefore they are very concerned in
16 first giving good treatment to the veterans; second,
17 in giving good teaching, post-graduate, to interns
18 and residents and thirdly doing all this with
19 efficiency or, in other words, economy.

20 Use of drugs poses a problem because
21 in general the younger doctors, interns and resi-
22 dents are the ones in the wards who might firsthand
23 prescribe the drugs.

24 Our Committee does not feel that all
25 the new drugs are better than everything that went
26 before but possibly they are relatively expensive.
27 They consider it is good medicine to encourage the
28 prescribing of drugs and requisitioning by generic
29 name.

30 They feel a most useful adjunct



1
2 towards encouraging that idea to have an approved
3 list of drugs for use in D.V.A. hospitals.

4 This is the book that I have here.
5 The staff then and the interns and residents are
6 actively encouraged to prescribe from this book.

7 THE CHAIRMAN: What is the title of
8 that book, Doctor, just so we will have it on the
9 record?

10 DR. MISENER: "Approved List of Drugs
11 for use in D.V.A. Hospitals".

12 Basically this is in two lists, a
13 general list. That list is the common drugs in
14 common use in our D.V.A. hospitals. These may be
15 requisitioned just by the pharmacist and hospital
16 superintendent.

17 MR. MACLEOD: Generally, what types
18 of drugs are they?

19 DR. MISENER: They start off with
20 acetylsalicylic acid and those compounds of that
21 nature; alomin, alomin hydroxide, aminofluorene,
22 ascorbic acid, atropine. Those are examples of
23 common old drugs.

24 The second list is called a restricted
25 list. These are the newer drugs not in general use
26 but after discussion, the Pharmaceutical Committee
27 has considered it worthwhile to add to our approved
28 list.

29 However, to requisition, this requi-
30 sition must be countersigned by the Chief of Service



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Misener dir
(MacLeod)

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(Medicine) himself.

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1 Then, off list drugs in large numbers
2 are used in our hospital. When first obtaining an
3 off list drug the Chief of Service (Medicine) has to
4 write a letter stating its composition and its
5 therapeutic effect and why he needs it. He countersigns
6 a requisition. That letter accompanies the requisition
7 to the Head Office. They come over my desk. When
8 he says he needs that drug, of course it is supplied.

9 THE CHAIRMAN: Doctor, are you speaking
10 now of drugs which would be in the restrictive class?
11 They are not on the list of restricted drugs, but
12 are they that type or class?

13 DR. MISENER: Yes, except perhaps newer,
14 even.

15 THE CHAIRMAN: I mean the same sort
16 of category of drugs that would be on the restrictive
17 list.

18 DR. MISENER: Yes, that is true.

19 Subsequently requisitions for the off
20 list items again have to be countersigned by the Chief
21 of Service(Medicine)referring to the original letter.
22 It is on the advise of the Departmental Pharmaceutical
23 Committee that drugs shall be ordered by generic name.
24 As recently as the 24th of June at a meeting in
25 Montreal where most of the Chiefs of Medicine were
26 gathered together besides two or three Deans of
27 Medicine that weren't on the Committee half an hour
28 was devoted to the drug problem and they reaffirmed
29 the desirability of having a list such as this.
30



1 The problem, however, is to keep it amended. At the
2 moment it hasn't been amended for three and a half years.
3 They say it is obsolete, of course. We are in the
4 process now of doing it. We hope that in the first
5 of January to have an entirely new edition.
6

7 MR. MACLEOD: Is the general purpose
8 of the list to discourage the indiscriminate use of
9 the newer products? Would that be one of the purposes
10 of the list?

11 DR. MISENER: Yes, put it another way,
12 I suppose it is seldom a newer product is superior
13 therapeutically to something else that has been used and
14 by that time has become a little bit cheaper. They
15 consider it is very good teaching the internes and
16 residents teaching in that manner in hospitals.

17 MR. MACLEOD: In other words, doctor, the
18 practice appears to be to discourage the use of
19 newer drugs and more expensive products until it has
20 proven medically they are superior?

21 DR. MISENER: That is quite true,
22 although as I say we have that variation in attitude
23 in different hospitals and the treatments are
24 decentralized, naturally. The doctors in the hospitals
25 decide what they want and therefore, in many cases
26 if they like to try out a new product that seems to
27 have some benefit they get these drugs at that time.

28 MR. MACLEOD: You made a remark to
29 me just casually before we came on that in your
30 experience there tended to be an excitement about new



1 drugs when they were first introduced and normally
2 the experience was that subsided. Is that so?

3 DR. MISENER: That has been my
4 experience. Classes of drugs that cause excitement
5 during the year - I mentioned three main categories,
6 one hypotensives. Hospitals began using large
7 numbers of the new type hypotensive drugs, but you
8 won't find any on the list there. They were big users.
9 The Committee that is interested chiefly in that
10 specially weren't convinced that they were the final
11 answer. Then there were antibiotics, of course, and
12 then there were tranquilizers.

13 THE CHAIRMAN: Doctor, when you are
14 speaking of some excitement attending new drugs, are
15 you speaking of excitement among the medical
16 profession or among the public, or both?

17 DR. MISENER: I don't know just
18 exactly how it is there.

19 THE CHAIRMAN: This fanfare and
20 publicity might arouse public interest, doctor, and
21 the Profession might be more skeptical.

22 DR. MISENER: That pressure is
23 reflected back to the doctors through patients, you
24 know. Of course some of these hypotensives in the
25 study of atherosclerosis and things like that, is
26 very important study in research as well as ordinary
27 treatment, the medical profession is largely interested
28 in something new which might have something.

29 MR. MACLEOD: Does the variety of drugs
30



1 and the variety of dosage forms and in general the
2 multiplicity of drugs pose any problem to your
3 operation?

4 DR. MISENER: I pity the pharmacists
5 and the Departmental Purchasing Agent, the conscientious
6 pharmacist in the hospital ordering new drugs for
7 the Chief of Service (Medicine), it will be by generic
8 names and it comes to the Department of the Purchasing
9 Agent as something new. It is extremely difficult to
10 find out what the drug is. If we were to go by trade
11 name you could refer to a catalogue and literature and
12 find out what the generic name is. It is true that
13 publicity wanes at times on the product before the
14 stock is used up. It poses a difficulty what to do
15 with the dead stock. Sometimes it has limited shelf
16 life, but it does pose a difficulty. Certainly book-
17 keeping - the greater variety of drugs you have the
18 more bookkeeping.

19 THE CHAIRMAN: To keep the record
20 clear, doctor, I think I understand when you speak
21 of the Chief of Service (Medicine) - is there a Chief
22 of Service (Medicine) in each hospital?

23 DR. MISENER: Yes, Chief of Service
24 (Medicine) in surgery and so on.

25 THE CHAIRMAN: Yes.

26 MR. MACLEOD: Now, has the policy
27 of the Department in ordering in generic names posed any
28 problem as to the quality of the drugs which you have
29 obtained? Perhaps I should say, resulted in any
30



1 difficulties in relation to quality?

2
3 DR. MISENER: Naturally our doctors
4 want to be assured that the drugs are proper quality
5 before giving them to the patients. It is the
6 policy to have newer drugs obtained from less known
7 companies assayed or tested by the Food and Drug
8 Division of the Department of National Health and
9 Welfare. It is time consuming. Mr. Shaw can tell
10 you more about this. Sometimes shipments have to
11 be rejected due to low quality so it poses that
12 problem, at least.

13 MR. MACLEOD: Yes, you do follow
14 the practice of testing drugs which are purchased?

15 DR. MISENER: The least well known
16 companies I think I would say.

17 MR. MACLEOD: Is there any other
18 aspect of your work with drugs which you think might
19 be of interest to the Commission?

20 DR. MISENER: Well, I consider one
21 of our biggest problems and most difficult to control,
22 for instance, the value of this booklet is not
23 evidenced in any statistics or anything that we can
24 see at Head Office, so we must rely on the sound
25 advice, of course, of the Chief of Service (Medicine),
26 that they do use - they have a recurring problem.
27 There is a new group of internes and residents
28 every first of July and it takes time to
29 indoctrinate new people.
30



1
2 MR. MACLEOD: Well, is it the
3 experience of the Department that when new interns
4 and doctors come in, that they have a tendency to
5 use the newer and more expensive drugs?

6 DR. MISENER: I think there is that
7 tendency, and they hear about them through perhaps
8 advertising literature or detail men.

9 MR. MACLEOD: You say you have a
10 problem in educating them each year. Just along
11 what lines do you have to educate them?

12 DR. MISENER: To the effect that not
13 all of the newer drugs are better than some of the
14 older, cheaper ones, but they have obtained the
15 impression that they are from propaganda of diffe-
16 rent types. I don't know whether this would be
17 relevant, but we also pay for drugs that are pres-
18 cribed under the doctor-of-choice plan for the
19 treatment of veterans. That is where in certain
20 categories a veteran can obtain treatment locally
21 from his own doctor.

22 In the last few years we have
23 adopted a practice, a policy, of supplying as many
24 of those drugs as feasible, excluding of course
25 narcotics, and those required for immediate use,
26 to supply them from our own dispensary. It is
27 not the usual practice of medicine, but it is with
28 the idea of saving money. Again, the figures at
29 head office don't reflect that, but undoubtedly
30 it does save money.



1
2 MR. MACLEOD: In your opinion your
3 Department effects a considerable saving by following
4 that practice?

5 DR. MISENER: It must, but I cannot
6 prove it from head office figures. The payments
7 we still make through outside pharmacists and
8 doctors, and our patient load is increasing, rather
9 than decreasing.

10 MR. MACLEOD: Do you feel, Doctor, that
11 the D.V.A. is able to give the very best medical
12 treatment to its patients, despite the fact that
13 you had put certain restrictions on drugs? Perhaps
14 restrictions is a strong word, but that you limit
15 to a certain extent the use of new drugs?

16 DR. MISENER: This is not the important
17 element in good treatment. The important element
18 is to employ good doctors, and we have those, and
19 that is why they are part-time doctors, you see,
20 and it is there we must accept their advice that
21 this is the way they are prescribing.

22 MR. MACLEOD: Do you feel that your
23 policy has the approval of the best medical men
24 in Canada?

25 DR. MISENER: We employ some of the
26 very best, and that is their opinion, that is true.

27 THE CHAIRMAN: You have indicated
28 that it is the policy of your Department to pur-
29 chase drugs by generic name, and then you referred
30 to this booklet, the list of approved drugs. Are



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they all in generic name?

DR. MISENER: Insofar as possible
they are listed by generic name.

THE CHAIRMAN: I want to give an
addition to that. You might show the trade names
of drugs that are manufactured by a number of
companies, show them along with the generic name?

DR. MISENER: In some cases in
brackets that has been done.

THE CHAIRMAN: But in some cases the
only example of a particular drug is the one made
by one company?

DR. MISENER: That is true.

THE CHAIRMAN: So in that case there
is not much difference between the generic name
and the trade name?

DR. MISENER: That is true.

CROSS-EXAMINATION BY MR. FRAWLEY:

MR. FRAWLEY: Do I understand it is
your experience that the use of generic drugs helps
to keep down the expense of treatment?

DR. MISENER: Mr. Shaw could talk
better. I don't think I should give the answer
to that.

MR. MACLEOD: The next witness will
be the Purchasing Agent.

MR. FRAWLEY: Well then, I will
reserve that question about cost. But do you



1
2 favour the prescribing of drugs by their generic
3 name, rather than by their brand name?

4 DR. MISENER: Yes, definitely, on
5 the advice of the Chiefs of Service (Medicine) of
6 our institutions.

7 MR. FRAWLEY: I take it that that
8 requires the, shall I say, the co-operation, of
9 the prescribing physicians that are employed in
10 your Department?

11 DR. MISENER: Yes.

12 MR. FRAWLEY: Because each prescrip-
13 tion must be given by a physician?

14 DR. MISENER: That is quite true.

15 MR. FRAWLEY: And he would have to
16 be convinced that that was a suitable way to
17 prescribe the drugs, by their generic name?

18 DR. MISENER: Yes.

19 MR. FRAWLEY: And you have had no
20 difficulty, I take it, in any way in that respect?

21 DR. MISENER: With three or four
22 exceptions. I didn't mention that a Chief of
23 Service (Medicine) can obtain on requisition one
24 particular trade name of a drug if he says that
25 that is the only make of drug which will satisfy
26 his treatment requirements, but I can only recall
27 offhand in the last three or four years, three
28 or four examples of where he insisted on so buying
29 a certain trade name. I think that answers your
30 question. They must find the generic drug



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satisfactory otherwise.

MR. FRAWLEY: It certainly does answer my question, and gives me a new appreciation. So I take it that in your Department the use of anything but the drugs in their generic name is an exception?

DR. MISENER: That is the policy. It is difficult to translate that into 100% practice, when there are so many doctors involved.

MR. FRAWLEY: Let us take it between the Department of Veterans' Affairs and the ordinary public going to a specialist and having these new antibiotics and tranquilizers prescribed for them. I would say that in the vast majority of cases what is prescribed is the brand name, is that right?

DR. MISENER: I don't know. Probably though.

MR. FRAWLEY: You would agree to that?

DR. MISENER: I don't know the answer to that.

MR. FRAWLEY: I was only drawing on your general knowledge. You are a member of the College of Physicians and Surgeons?

DR. MISENER: No, I am an L.M.C.C., Licentiate Medical Council of Canada.

MR. FRAWLEY: But you are a physician?



1
2 DR. MISENER: Yes, but not a practi-
3 sing physician since '41.

4 MR. FRAWLEY: Not practising in the
5 ordinary sense?

6 DR. MISENER: No.

7 MR. FRAWLEY: But I was only
8 drawing upon your knowledge as a physician, as to
9 whether or not in the vast majority of cases what
10 is prescribed today is the brand name, and I
11 thought perhaps there was general agreement about
12 that. Am I not right?

13 DR. MISENER: I cannot state. I am
14 not practising.

15 MR. FRAWLEY: But in any event, in
16 your Department the prescribing of the brand name
17 drug is the exception?

18 DR. MISENER: That is true.

19 MR. FRAWLEY: And you have found
20 that it works quite satisfactorily, insofar as
21 the health and well-being of your patients etc?

22 DR. MISENER: It is generally true,
23 of course.

24 THE CHAIRMAN: Just to be clear on
25 that, do you find that most of the physicians who
26 are practising in the D.V.A. hospitals agree
27 with the policy of purchasing by generic name,
28 or do they just accept it?

29 DR. MISENER: I cannot answer that.
30 The only dealings we have in this connection are



1
2 with the Chiefs of Service (Medicine). I should
3 think their staff in general would agree with
4 their Chief.

5 THE CHAIRMAN: Would it be true
6 that the great majority of drugs that are purchased
7 by or under the Chief of Service (Medicine) are
8 purchased by generic name?

9 DR. MISENER: Yes.

10 THE CHAIRMAN: That is a fact?

11 DR. MISENER: That is a fact.

12 THE CHAIRMAN: It would seem to
13 indicate that there are not too many of the
14 physicians who disapprove of that policy?

15 DR. MISENER: I should think so, but
16 I don't know.

17 THE CHAIRMAN: Thank you Doctor.
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1 JAMES WILLIAM ROBERT SHAW, sworn

2
3 DIRECT EXAMINATION BY MR. MACLEOD

4 MR. MACLEOD: What is your position
5 with the Department of Veterans' Affairs, Mr. Shaw?

6 MR. SHAW: I am Departmental Purchasing
7 Agent with the Department of Veterans' Affairs.

8 MR. MACLEOD: And in your capacity
9 as Departmental Purchasing Agent do you have charge
10 of the purchase of drugs?

11 MR. SHAW: The purchase of drugs
12 falls under my responsibility, yes.

13 MR. MACLEOD: In purchasing drugs do
14 you order them by generic or by brand names?

15 MR. SHAW: Both; drugs are ordered both
16 ways.

17 MR. MACLEOD: Would you just explain
18 that?

19 MR. SHAW: In the main, the generic
20 names are used. In those cases where a Chief of
21 Service (Medicine) may stipulate a definite brand of
22 a particular drug we may then order it or purchase it
23 by that brand name.

24 MR. MACLEOD: Is it a fair conclusion
25 that the majority of your drugs are purchased under
26 the generic name?

27 MR. SHAW: That is true, the majority.

28 MR. MACLEOD: You may, of course,
29 take the drug tetracyclin which may be manufactured
30 by four or five firms. If you call for tenders



1 for tetracyclin you may receive tenders from some
2 of the people who sell tetracyclin under their trade
3 name?

4 MR. SHAW: That is true.

5 MR. MACLEOD: So you advertise under
6 the generic name, you probably receive tenders under
7 the generic name, but in some cases the goods supplied
8 would bear the brand name?

9 MR. SHAW: This is quite possible.

10 MR. MACLEOD: They may or may not
11 depending on the source of supply.

12 MR. SHAW: Yes, on the source of
13 supply of the product.

14 MR. MACLEOD: Does the policy of
15 purchasing under generic names raise any questions
16 or difficulties in relation to quality?

17 MR. SHAW: It has raised difficulties
18 in relation to quality.

19 MR. MACLEOD: Perhaps you would just
20 explain.

21 MR. SHAW: If I may say, the use of
22 generic names has in the past two or three years
23 brought into the drug purveying picture people,
24 firms, I should say, who offer the drug by its
25 generic name from little known foreign sources of
26 supply, and as the policy of the Department is to
27 provide the proper drug of acceptable quality to
28 the treatment services, one of the provisions of
29 our form of tender is to state the country of origin
30



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Shaw, dir
(MacLeod)

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1 of the drug supplied, and if the tender indicates
2 that the drug is of foreign origin we must, of course,
3 ensure that it meets the laid down standards for
4 that drug, either U.S.P. or any of the other
5 authorities on drugs. In order to determine that
6 it meets this quality, the drugs are referred to
7 the Pure Food and Drugs Laboratory, Department of
8 National Health and Welfare. Now, in order to do
9 that, of course, it is necessary to bring in the
10 entire order of the drug and hold it until it is
11 tested. This requires storage space, it is an
12 investment in inventory. The time required for
13 such testing varies from a few days in some cases
14 to those drugs which may have materials in them
15 coming from a product which is not too well known
16 even by our own National Health and Welfare labs
17 and requires rather extensive testing, and we have
18 known the length of time to be three months before
19 we get the result of the testing. It is a serious
20 problem to determine that the drug is of proper
21 quality before it is issued.

22 THE CHAIRMAN: You mentioned drugs
23 of foreign origin. That has a different significance
24 in some people's minds to others. What do you mean
25 "foreign origin"?
26

27 MR. SHAW: Other than the United
28 States and Canada.

29 THE CHAIRMAN: The United States is
30 not foreign in that sense?



1 MR. SHAW: No. I am talking of those
2 which originate in Denmark, Italy, France.

3 THE CHAIRMAN: Perhaps Britain?

4 MR. SHAW: Yes.

5 THE CHAIRMAN: Everywhere except the
6 United States and Canada?

7 MR. SHAW: Yes.

8 MR. MACLEOD: Is it a matter of
9 routine that you test every drug that comes from a
10 foreign source?

11 MR. SHAW: If a drug is supplied by
12 other than what we have grown to know to be
13 established sources of supply, yes, it is routine.

14 MR. MACLEOD: In respect of drugs
15 that you buy manufactured by Canadian companies, made
16 in Canada, are there some companies in your experience
17 put out drugs that may be of doubtful quality?

18 MR. SHAW: If one regards the
19 necessity of testing or the routine of testing
20 as doubting the quality, I would say the answer is
21 yes. But I don't say that we doubt the quality.

22 MR. MACLEOD: That is the point I was
23 coming around to. When you make purchases from
24 certain Canadian companies do you feel that they
25 should be tested?

26 MR. SHAW: Yes, there are certain
27 Canadian companies which we do feel that they should
28 be tested.

29 MR. MACLEOD: Are there companies
30



1 or products you accept as a matter of course?

2 MR. SHAW: We do accept the products
3 of some Canadian companies without testing, but I would
4 say it is prior to purchase. The products
5 supplied to hospitals, if the name of the supplier
6 has changed, then I would say the Chief of Medicine
7 would have the laboratory run^a/test to make sure it
8 would do the job it is required to do.

9 MR. MACLEOD: Can you give any
10 estimate or any description of the quantity or amount
11 of drugs that have had to be turned back that didn't
12 meet your standards? Is it the exceptional thing
13 or ---

14 MR. SHAW: Oh, it is the exception.
15 Out of possibly fifty tests I would say that not
16 any more than three or four products have been
17 rejected.

18 THE CHAIRMAN: That is from all sources,
19 Mr. Shaw?

20 MR. SHAW: Yes.

21 MR. MACLEOD: Are you sufficiently
22 knowledgeable of the pharmacy of drugs to express any
23 opinion whether they were serious differentials?

24 MR. SHAW: I receive the reports
25 from the Pure Food and Drug Laboratory, and in the
26 main the rejections have been on the basis of not meet-
27 ing the potency required. Whatever the test
28 requirements are, U.S.P. or whatever other authority,
29 there are certain maximum and mininum limits, and
30



1 if the drug does not fall within those limits we
2 are advised it is either below or otherwise. I have
3 had rejections on the basis of improper labelling,
4 not in conformity with the labels laid down by the
5 Pure Food and Drug Act.

6 MR. MACLEOD: Can you give any
7 estimates of the total expenditure of the Department
8 for drugs in a year?

9 MR. SHAW: About \$2½ million, I would
10 say, for drugs.

11 MR. MACLEOD: You are a pretty
12 substantial purchaser.

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2 Now, as a result of questions asked
3 in the House of Commons, did you prepare certain
4 tabulations of purchases or were they prepared
5 under your direction?

6 MR. SHAW: They were prepared under
7 my direction.

8 MR. MACLEOD: I show you a couple
9 of photostatic copies here. I believe you have
10 some material in your briefcase. These are not
11 very good. There is a glass here, if it will
12 assist you. Having that material before you, Mr.
13 Shaw, can you point to any results pricewise as
14 a result of purchasing under generic names?

15 MR. SHAW: I believe you are refer-
16 ring to reduction in prices over normal --

17 MR. MACLEOD: If you will look at
18 the other document which covers the period
19 January 1st 1958 to January 31st 1960. Have you
20 that in front of you?

21 MR. SHAW: Yes, I have.

22 MR. MACLEOD: The first drug is
23 mycetin, if my pronunciation is correct. In that
24 case there was only one company offered to supply.

25 MR. SHAW: Only one source of supply
26 for that particular drug.

27 MR. MACLEOD: The price was \$7.23
28 per 100 tablets until August 1959 when the price
29 increased to \$7.89. Is that correct?

30 MR. SHAW: That is correct.



1
2 MR. MACLEOD: So that the price you
3 were charged remained constant for a period and
4 then increased.

5 MR. SHAW: Increased slightly, yes.

6 THE CHAIRMAN: Is there only one
7 source of supply throughout the whole of Ontario?

8 MR. SHAW: Yes, throughout the
9 whole of that period.

10 MR. MACLEOD: In connection with the
11 answer given by the witness, I will draw the
12 Commission's attention to page 181 of the statement,
13 at the very bottom of the page, where the informa-
14 tion is to the effect that the price to an ordinary
15 hospital is \$7.89 so that even at the best of times
16 in respect of this drug the Department of Veterans'
17 Affairs was only able to obtain a few cents cheaper
18 and latterly the price to the D.V.A. has been
19 precisely the same as to an ordinary hospital.

20 You were going to point to some
21 other examples. I think I interrupted you to
22 make this point.

23 MR. SHAW: This particular form is
24 covering such a long period. There are several
25 pages to it. It is quite some time since I saw
26 it.

27 Meprobamate, I think, is the item
28 I am looking for. It is on page 14 of this.

29 In October of 1958 this drug was
30 purchased at \$21 per 1,000 tablets. The price



1
2 from other suppliers was down as low in January
3 1959 as \$6.50 per 1,000.

4 The field of competition enlarged
5 considerably about - oh - four or five years ago.

6 MR. MACLEOD: Yes.

7 MR. SHAW: When I took over this
8 position it was reasonable to - I felt - in taking
9 over to enlarge the fields of competition where
10 things were sort of getting into a rut and in
11 some cases this resulted in finding additional
12 sources of supply.

13 There was an item chloramphenicol
14 pomade on page 23.

15 We were purchasing that for a
16 considerable time at \$1.89 per bottle and in
17 November of 1959 competition was obtained and it
18 was purchased at \$1.75 and ultimately at \$1.70
19 a bottle and then subsequently in January 1960,
20 the original supplier from whom we had been buying
21 it at \$1.89, reduced his price to \$1.60 which
22 indicated such competition was able to reduce.

23 MR. MACLEOD: What does your experience
24 indicate when you are able to locate several
25 competing suppliers for a particular drug? What
26 effect does that have on price?

27 MR. SHAW: It has tended to reduce
28 the price. I have some material in my briefcase --

29 THE CHAIRMAN: Mr. Shaw, referring
30 back just for a moment to the meprobamate item on



1
2 page 14. There was a remarkable difference in the
3 price from two sources of supply which you
4 mentioned. In one case \$21 per 1,000 when purchased
5 in quantity of 95,000.

6 MR. SHAW: Yes.

7 THE CHAIRMAN: However three months later
8 \$6.50 per 1,000 when purchased in a 50,000 quantity.

9 MR. SHAW: Yes.

10 THE CHAIRMAN: A somewhat smaller
11 quantity but a very much lower price.

12 MR. SHAW: Yes.

13 THE CHAIRMAN: Then in March from
14 still another supplier, it was apparently \$32.86
15 per 1,000 purchased in 15,000 quantity.

16 MR. SHAW: This is true, but if you
17 will notice Note 8: "This particular preparation
18 was purchased on special request of the treating
19 doctor". In other words the drug at that time
20 purchased from Wyeth Brothers was specifically
21 requested as being a particular treatment for
22 that particular patient. The reason for that, I
23 wouldn't be able to give.

24 THE CHAIRMAN: There is a very
25 substantial difference in price. I was wondering
26 if you are in a position to say in the use of
27 these quantity purchases from the several sources
28 at very different prices, all the way from \$32.86
29 down to \$6.50, whether one product was found to
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2 be very much superior to the other?

3 MR. SHAW: No, there is very little
4 difference in the actual quality of the product.

5 THE CHAIRMAN: Very little difference.

6 MR. SHAW: Yes.

7 MR. MACLEOD: You said that you had
8 some material in your briefcase that would illus-
9 trate this matter.

10 MR. SHAW: For chloramphenicol in
11 February 1955 we were paying \$26.04 per 100.

12 In February 1960 we were paying
13 \$9.50 per 100.

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1 I have examples where prices did
2 not decrease, chlortetracycline, 250 milligrams,
3 the price remains the same at \$24.22 for five years.
4 Penicillin ammonium, 500,000 units we were purchasing
5 in September, 1956, 100 tablets at \$13.35. In
6 February, 1960 100 tablets were at \$3.95.
7 Chlorpromazine, 25 milligram tablets purchased in
8 February 1955 per thousand at \$35.00 and in February
9 1960 per thousand, \$21.00. Promazine tablets, 25
10 milligram, 1957 per hundred, \$3.19 and in September,
11 1959, per hundred, 34 cents.

12 THE CHAIRMAN: Are these from the
13 same supplier?

14 MR. SHAW: No. I wouldn't want to
15 say at the moment whether they were or not. These
16 are just comparisons of prices from date to date.

17 THE CHAIRMAN: I was wondering if
18 the difference arose because of competition between
19 suppliers or the same supplier reduced his price
20 substantially if you happen to know.

21 MR. SHAW: Offhand, I don't know,
22 sir.

23 THE CHAIRMAN: In your experience
24 are those price reductions of which you have given
25 details the results of a general falling of prices
26 on the market are you receiving better tenders?

27 MR. SHAW: With regard to the
28 penicillins there has been some reduction in the
29 market. I wouldn't want to answer that question
30



1 without referring to the purchase documents as to
2 whether....

3 MR. MACLEOD: What is your general
4 conclusion as to the results of your policy of
5 buying under generic names and inviting tenders from
6 all possible suppliers, what results does that achieve,
7 if any?

8 MR. SHAW: The ultimate results, I
9 believe, has provided adequate treatment at the least
10 possible cost to the taxpayer.

11 MR. MACLEOD: Do you think you are
12 getting better prices under this policy than you
13 would get if you were buying by specific brand names?

14 MR. SHAW: I think so.

15 MR. MACLEOD: You think the saving
16 is substantial?

17 MR. SHAW: I do.

18 MR. MACLEOD: I think those are
19 all the questions I have.

20 THE CHAIRMAN: There is just one
21 point I would like to get on the record. You refer
22 to purchasing from some drug companies without pre-
23 purchase testing. Now, there is some information
24 in the green book prepared by the Director of
25 Investigation and Research that indicates in some
26 quarters, at any rate, there is the feeling that
27 the larger drug companies are more reliable as to
28 quality than the smaller ones are. I was wonder
29 if your experience, that is your purchasing without
30



1 having drugs tested previously applies only to the
2 larger well established drug companies or are there
3 a number of smaller drug companies you find
4 sufficiently reliable?

5 MR. SHAW: There are some - there
6 are smaller drug companies that are considered as
7 reliable as the larger ones.

8 THE CHAIRMAN: Some are quite as
9 good for the product they make?

10 MR. SHAW: Yes.

11 THE CHAIRMAN: As the larger ones?

12 MR. SHAW: That is quite true, sir.

13 THE CHAIRMAN: Thank you.

14 MR. MACLEOD: As far as I know, sir,
15 those are all the witnesses for the hearing in Ottawa.

16 THE CHAIRMAN: We will adjourn then
17 and resume our hearings in Halifax next Monday
18 morning.

19 ---Whereupon the hearing adjourned to Halifax
20 on Monday morning, July 10th, 1961 at 10:00 a.m.

